



JUDICIAL COUNCIL  
OF CALIFORNIA

TECHNOLOGY COMMITTEE

[www.courts.ca.gov/jctc.htm](http://www.courts.ca.gov/jctc.htm)  
[jctc@jud.ca.gov](mailto:jctc@jud.ca.gov)

**JUDICIAL COUNCIL TECHNOLOGY COMMITTEE**

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))  
THIS MEETING WILL BE CONDUCTED BY TELECONFERENCE  
THIS MEETING WILL BE RECORDED

**Date:** August 12, 2019  
**Time:** 12:00 noon - 1:00 p.m.  
**Public Call-in Number:** 1-877-820-7831 Passcode: 3511860

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

**I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))**

**Call to Order and Roll Call**

**Approval of Minutes**

Approve minutes of the May 16, 2019 meeting.

**II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(2))**

**Written Comment**

In accordance with California Rules of Court, rule 10.75(k)(1), public comments about any agenda item must be submitted by August 9, 2019, 12:00 noon. Written comments should be e-mailed to [jctc@jud.ca.gov](mailto:jctc@jud.ca.gov) or mailed or delivered to 455 Golden Gate Avenue, San Francisco, CA 94102, attention: Rita Alderucci. Only written comments received by August 9, 2019, 12:00 noon will be provided to advisory body members prior to the start of the meeting.

**III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1- 8)**

**Item 1**

**Chair Report**

Provide update on activities of or news from the Judicial Council, advisory bodies, courts, and/or other justice partners.

Presenter: Hon. Marsha G. Slough, Chair

**Item 2**

**Update/Report on Information Technology Advisory Committee (ITAC)**

An update and report on ITAC will be provided; this will include the activities of the workstreams.

Presenter: Hon. Sheila F. Hanson, Chair, Information Technology Advisory Committee

**Item 3**

**Trial Court Rules and Statutes Revisions: Proposal to Amend the Penal Code Section 1203.01 (Action Required)**

Review public comments to amend Penal Code section 1203.01. The proposed amendments provide an electronic alternative to mailing certain statements and reports.

Presenters: Hon. Peter Siggins, Chair, Rules and Policy Subcommittee  
Ms. Andrea Jaramillo, Attorney II, Legal Services

**Item 4**

**Trial Court Rules and Statutes Revisions: Proposal to Amend the Code of Civil Procedure Section 1010.6 (Action Required)**

Review public comments to amend Code of Civil Procedure section 1010.6. The proposed amendments allow courts to recover actual costs of permissive electronic filing and mandatory electronic filing by court order, just as they can with mandatory electronic filing by local rule, and clarify a provision for signatures made not under penalty of perjury to account for signatures of non-filers.

Presenters: Hon. Peter Siggins, Chair, Rules and Policy Subcommittee  
Ms. Andrea Jaramillo, Attorney II, Legal Services

**Item 5**

**Trial Court Rules and Statutes Revisions: Proposed Amendments to the Electronic Filing and Service Rules (Action Required)**

Review public comments to amendments to the electronic filing and services rules. The proposed amendments to rule 2.251 clarify how notice of consent to electronic service is to be given and provide an advisory comment on consent language. The proposed amendments to rule 2.257 revise language on signatures of opposing parties, and make minor revisions consistent with Code of Civil Procedure section 1010.6.

Presenters: Hon. Peter Siggins, Chair, Rules and Policy Subcommittee  
Ms. Andrea Jaramillo, Attorney II, Legal Services

**Item 6**

**Trial Court Rules and Statutes Revisions: Proposed Amendments to the Rules on Remote Access to Electronic Records (Action Required)**

Review public comments to amendments to the rules on remote access to electronic records. The proposed amendments to rule 2.540 add more clarity and additional local government entities.

Presenters: Hon. Peter Siggins, Chair, Rules and Policy Subcommittee  
Ms. Andrea Jaramillo, Attorney II, Legal Services

**Item 7**

**Court of Appeal Service Copy of a Petition for Review (Action Required)**

Review public comments received and decide whether to recommend the Judicial Council approve amendments to the rule regarding petitions for review in the California Supreme Court. The proposal would remove the outdated requirement to send to the Court of Appeal a separate service copy of an electronically filed petition for review. This is a joint proposal with the Appellate Advisory Committee.

Presenters: Hon. Louis R. Mauro, Chair, Appellate Advisory Committee, Vice-Chair, Information Technology Advisory Committee, and Chair, Joint Appellate Technology Subcommittee  
Mr. Eric Long, Attorney II, Legal Services

**Item 8**

**Uniform Formatting Rules for Electronic Documents (Action Required)**

Review public comments received and decide whether to recommend the Judicial Council approve amendments to the rules regarding format of documents. This proposal would create uniform formatting rules for electronic documents filed in the appellate courts. This is a joint proposal with the Appellate Advisory Committee.

Presenters: Hon. Louis R. Mauro, Chair, Appellate Advisory Committee, Vice-Chair, Information Technology Advisory Committee, and Chair, Joint Appellate Technology Subcommittee  
Mr. Eric Long, Attorney II, Legal Services

**A D J O U R N M E N T**

**Adjourn**



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## JUDICIAL COUNCIL TECHNOLOGY COMMITTEE

### MINUTES OF OPEN MEETING

May 16, 2019  
10:00 - 11:00 AM

Farallon Room, Judicial Council Conference Center  
455 Golden Gate Avenue, San Francisco, CA 94102

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**Advisory Body Members Present:** Hon. Marsha G. Slough, Chair; Hon. Gary Nadler, Vice-Chair; Hon. Kyle S. Brodie; Hon. Jonathan B. Conklin; Ming W. Chin; Hon. Rebecca Wightman; Ms. Rachel W. Hill; and Ms. Andrea K. Rohmann

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**Advisory Body Members Absent:** Ms. Nancy Eberhardt

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**Liaison Members Present:** Hon. Sheila F. Hanson

**Others Present:** Hon. Louis R. Mauro; Ms. Heather Pettit; Mr. Mark Dusman; Ms. Virginia Sanders-Hinds; Ms. Jessica Goldstein; Ms. Jamel Jones; Ms. Kathy Fink; Mr. Richard Blalock; Ms. Rica Abesa; Ms. Daphne Light; Ms. Andrea Jaramillo; Ms. Camilla Kieliger; Ms. Christy Simons; and Mr. Eric Long

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#### OPEN MEETING

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##### **Call to Order and Roll Call**

The chair called the meeting to order, took roll call, and advised no public comments were received.

##### **Approval of Minutes**

The advisory body reviewed and approved the minutes of the April 8, 2019 open meeting.

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#### DISCUSSION AND ACTION ITEMS

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##### **Item 1**

##### **Chair Report**

**Update:** Hon. Gary Nadler, Vice-Chair, welcomed and thanked everyone for attending on behalf of Hon. Marsha Slough, Chair. Judge Nadler reviewed the agenda for the meeting and provided updates on recent meetings in which the Chair and other members represented the JCTC or reported on the JCTC activities.

**Item 2**

**Update/Report on Information Technology Advisory Committee (ITAC)**

**Update:** Hon. Sheila F. Hanson, Chair of ITAC, provided an update and report on the activities of the advisory committee, its subcommittees, and its workstreams. Workstreams with key milestones highlighted included the Remote Video Appearances and the Futures Commission Directives related to Intelligent Chat and Voice-to-Text Language Services.

**Action:** The committee received the report.

**Item 3**

**Appellate Procedure: Service Copy of a Petition for Review**

**Update:** Hon. Louis R. Mauro, Chair of the Appellate Advisory Committee, Vice-Chair of the Information Technology Advisory Committee, and Chair of the Joint Appellate Technology Subcommittee, provided an update on a proposal to update court procedures and increase efficiency from the Appellate Advisory Committee and the Information Technology Advisory Committee. The proposal would amend California Rules of Court, rule 8.500 regarding petitions for review in the California Supreme Court to remove the requirement to send to the Court of Appeal a separate service copy of an electronically filed petition for review.

**Action:** The committee received the report.

**Item 4**

**Appellate Procedure: Uniform Formatting Rules for Electronic Documents**

**Update:** Hon. Louis R. Mauro provided an update on a proposal from the Appellate Advisory Committee and the Information Technology Advisory Committee to amend California Rules of Court, rules 8.40, 8.44, 8.71, 8.72, 8.74, 8.204, and 8.252 to create uniform formatting rules for electronic documents filed in the appellate courts.

**Action:** The committee received the report.

**A D J O U R N M E N T**

There being no further business, the meeting was adjourned.



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on November 14–15, 2019

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Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Following Conviction	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Pen. Code, § 1203.01	January 1, 2021
Recommended by	Date of Report
Information Technology Advisory Committee	July 18, 2019
Hon. Sheila F. Hanson, Chair	Contact
	Andrea L. Jaramillo, 916-263-0991 <a href="mailto:andrea.jaramillo@jud.ca.gov">andrea.jaramillo@jud.ca.gov</a>

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### **Executive Summary**

The Information Technology Advisory Committee recommends sponsoring legislation to allow for electronic delivery of documents currently required to be mailed following conviction. The proposal is intended to reduce reliance on paper and improve efficiency by providing an electronic option where paper is currently required. The proposal originated with a recommendation of the Judicial Council’s Data Exchange Working Group, which is made up of court participants and justice partners working to develop standardized data exchanges.

### **Recommendation**

The Information Technology Advisory Committee (ITAC) recommends the Judicial Council sponsor legislation to amend Penal Code section 1203.01 to allow courts to electronically deliver certain material that courts are currently required to mail after a person has been convicted. If the Legislature approves the amendments, the expected effective date would be January 1, 2021.

The text of the amendment is attached at pages 6–7.

## Relevant Previous Council Action

In November 2018, the Judicial Council adopted the *Strategic Plan for Technology 2019–2022* to provide comprehensive technology strategy at the branch level. The plan included a goal of promoting rule and legislative changes that facilitate the use of technology in the courts. (*Strategic Plan for Technology 2019–2022*, pp. 14–15.)

## Analysis/Rationale

Under Penal Code section 1203.01, once judgment is pronounced in a criminal case, “the judge and the district attorney, respectively, may cause to be filed with the clerk of the court a brief statement of their views respecting the person convicted or sentenced and the crime committed, together with any reports the probation officer may have filed relative to the prisoner.” (Pen. Code, § 1203.01(a).) Counsel for the defendant and the law enforcement agency that investigated the case may also file statements with the clerk. (*Ibid.*) The clerk is then required to mail copies of the statements and reports to the defendant, in care of the California Department of Corrections and Rehabilitation (CDCR), and to the attorney for the defendant. (*Ibid.*) The attorney for the defendant may also file a statement and, in that event, the clerk is required to mail a copy of that statement to the district attorney. (*Ibid.*) The clerk is also required to mail certified copies of all statements and reports addressed to the CDCR at the prison or other institution to which the person convicted is delivered. (*Ibid.*)

In addition, the clerk is required to mail to the prison or other institution to which the person convicted is delivered, copies of the charging documents and waiver and plea forms, if any. (Pen. Code, § 1203.01(b)(1), (2).) Finally, when the sentence is death or of an indeterminate term, or upon request of CDCR, the inmate, or the inmate’s counsel, the clerk is required to mail the transcript of the proceedings at the time of sentencing, and, if applicable, the transcript of the proceedings at the time of the defendant’s guilty or nolo contendere plea. (*Ibid.*)

There is no option for the clerk to deliver the documents or data contained in the documents described in Penal Code section 1203.01 by electronic means rather than by mail.

The proposal would add a new subdivision to Penal Code section 1203.01 to create an option for electronic delivery of the material currently required to be mailed. Under the proposal, if a recipient consents to electronic delivery, the court may deliver the documents electronically rather than by mail. Accordingly, providing electronic delivery would be an option, though not a requirement for the court, and likewise, receiving documents electronically would be an option for the recipient.<sup>1</sup>

A main concern of the committee with electronic delivery is that an incarcerated recipient may have unreliable access to electronic resources even if he or she had initially consented to electronic delivery rather than mail. To address this concern, the proposal includes a provision

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<sup>1</sup> Penal Code section 1203.01(a) would still require material sent to the CDCR to be certified. Courts are permitted to certify their records “by electronic or other technological means.” (Gov. Code, § 68150(f).)

that would still require the court to mail the materials to an incarcerated recipient upon the request of that recipient or his or her counsel even if the incarcerated recipient had consented to electronic delivery.

The proposal is intended to reduce reliance on paper and improve efficiency by providing an electronic option where paper is currently required.

### **Policy implications**

The proposal advances the judicial branch goal of promoting rule and legislative changes that facilitate the use of technology in the courts. (*Strategic Plan for Technology 2019–2022*, pp. 14–15.) In particular, it advances an objective of ensuring “current rules and legislation do not inhibit the use of technology solutions.” (*Id.* at p. 14.)

There may be additional need for further policy development to address potential issues that may arise from problems with electronic delivery. For example, how to address failures of electronic delivery, capture consent to electronic delivery, or security of electronic delivery. Ultimately, ITAC determined that these issues did not need to be addressed in statute and anticipates policies to address these practical issues may be addressed at the local level. However, ITAC will consider state-level rulemaking as an option if the need arises.

### **Comments**

Four commenters responded to the invitation to comment: the Superior Court of San Diego County, which agreed with the proposal if modified; the Superior Court of Orange County, which agreed with the proposal if modified; the Orange County Bar Association (OCBA), which agreed with the proposal; and the Child Support Directors Association (CSDA), which agreed with the proposal.

All commenters agreed that the proposal appropriately addressed its stated purpose. The San Diego County court noted as a practical concern that courts may have technological limitations impacting their ability to implement the electronic delivery option, but that courts could decide what to choose in light of those limitations. The OCBA observed that the proposal “advances the judicial branch goal of promoting rule and legislative changes that facilitate the use of technology in the courts.”

The bulk of comments received were in response to ITAC’s request for specific comments. ITAC had considered three options when developing the proposal. (See Alternatives considered, below.) ITAC’s main concern in crafting the options was that an inmate, even if he or she opted in to electronic delivery, may find access to the electronic materials difficult. ITAC ultimately chose the option under which an inmate may opt in to electronic delivery, but may also request mailed documents. The Orange County court and the OCBA both preferred the proposed option. However, ITAC sought specific comments on the two alternatives to the option it selected. One of the alternatives was to make incarcerated persons ineligible for electronic delivery and require the court to continue to mail documents to those persons. The San Diego County court submitted detailed comments on this alternative. The court’s concern was of workload. In particular, courts



would have to send the same materials twice if an inmate opted in to electronic delivery and then requested the documents be mailed. The committee agreed that this would be an added workload. However, this should be ameliorated by the discretionary nature of the electronic delivery option. The proposed amendment allows, but does not require, courts to deliver the materials by electronic means. Courts could choose a mail-only option for materials sent to inmates.

The San Diego County court also proposed adding in a good cause requirement as another alternative. This would require an inmate to have good cause to obtain a mailed copy of the documents after opting in to electronic delivery. The court noted that inmates can also access documents through their attorney and through the prison. The committee determined that while requiring a good cause standard could potentially reduce the number of requests for paper copies from inmates, it would also create more work for a court than mailing documents. First, inmate efforts to demonstrate good cause would likely result in lengthy individual filings. Second, the court would have to make a good cause determination in every instance in addition to mailing documents where good cause is found.

The proposal does not prescribe any particular method for how the consent of the recipient would be documented. ITAC sought comments on whether this should be addressed by a statute, a rule, or some other way. The San Diego County court recommended that consent to electronic service be required in writing in the statute. The Orange County court recommended the creation of a form. Though not specifically in response to the issue of documentation of consent, the OCBA also recommended the creation of a form to ensure accurate contact information is captured. ITAC determined that written consent would be an effective way to document consent, but in addition, oral consent on the record would also be effective. The committee revised the proposed language consistent with these determinations. The committee will consider developing a relevant form in the future.

## **Alternatives considered**

### ***Terminology***

ITAC considered alternatives for the terminology to use in the new subdivision to refer to the paper documents that Penal Code section 1203.01 currently requires to be mailed. Because data exchanges may not require the transmission of an electronic version of a paper document (e.g., a PDF), the term “document” alone seemed insufficient. The Data Exchange Working Group suggested “information” instead because the information contained in the documents is what is important. Because “information” has a particular meaning as an accusatory pleading in criminal law, to avoid confusion, the committee decided to use “documents, or the data contained in the documents” instead to convey that the document itself is not necessarily required.

The Data Exchange Working Group had suggested “the clerk of the court may deliver the information described in subdivisions (a) and (b) by electronic means in a mutually agreeable format,” but the committee did not include the “mutually agreeable format” language because the proposed new subdivision is already predicated on consent. If the recipient did not agree with the format the court had available, the recipient could simply not consent to electronic delivery.

### ***Delivery options***

To address the committee's concern about incarcerated recipients having unreliable access to electronic resources to receive an electronic delivery from the court, the committee considered three options: (1) incarcerated recipients would continue to receive mail-only documents, but other recipients could opt in for electronic delivery; (2) incarcerated recipients could opt in for electronic delivery but would receive mail-only documents as well; or (3) incarcerated recipients could opt in for electronic delivery but could still receive mailed documents upon request.

ITAC chose the third option for the proposal because it removes all reliance on paper when recipients opt in but still ensures convicted persons can later obtain mailed paper copies if they request them. Continuing to require the use of mail would not be consistent with the strategic goal of facilitating technology use by the courts. The committee concluded that the third option had the best balance of advancing the use of technology while mitigating against unreliable access to electronic resources that persons convicted may experience even if they had initially opted in for electronic delivery. However, ITAC requested and received specific comments on whether one of the other options was preferable, and those comments are discussed in the comments section above.

### **Fiscal and Operational Impacts**

The San Diego County court commented that any cost savings would be minimal because the labor involved in scanning paper-filed documents can be more intensive than copying and mailing them. The Orange County court commented that cost savings on postage for transcripts would be significant.

Because electronic delivery is optional on the part of the courts, each court can decide not to use electronic delivery when use of electronic delivery would create financial or operational inefficiencies.

### **Attachments and Links**

1. Penal Code section 1203.01, at pages 6–7
2. Chart of comments, at pages 8–15
3. Link A: Judicial Council of California, *Strategic Plan for Technology 2019–2022*, [www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf](http://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf)

Section 1203.01 of the Penal Code would be amended, effective January 1, 2021, to read:

1 **§ 1203.01**

2  
3 (a) Immediately after judgment has been pronounced, the judge and the district attorney,  
4 respectively, may cause to be filed with the clerk of the court a brief statement of their  
5 views respecting the person convicted or sentenced and the crime committed, together  
6 with any reports the probation officer may have filed relative to the prisoner. The judge  
7 and district attorney shall cause those statements to be filed if no probation officer's  
8 report has been filed. The attorney for the defendant and the law enforcement agency that  
9 investigated the case may likewise file with the clerk of the court statements of their  
10 views respecting the defendant and the crime of which he or she was convicted.  
11 Immediately after the filing of those statements and reports, the clerk of the court shall  
12 mail a copy thereof, certified by that clerk, with postage prepaid, addressed to the  
13 Department of Corrections and Rehabilitation at the prison or other institution to which  
14 the person convicted is delivered. The clerk shall also mail a copy of any statement  
15 submitted by the court, district attorney, or law enforcement agency, pursuant to this  
16 section, with postage prepaid, addressed to the attorney for the defendant, if any, and to  
17 the defendant, in care of the Department of Corrections and Rehabilitation, and a copy of  
18 any statement submitted by the attorney for the defendant, with postage prepaid, shall be  
19 mailed to the district attorney.  
20

21 (b)(1) In all cases in which the judgment imposed includes a sentence of death or an  
22 indeterminate term with or without the possibility of parole, the clerk shall, within 60  
23 days after judgment has been pronounced, mail with postage prepaid, to the prison or  
24 other institution to which the person convicted is delivered, a copy of the charging  
25 documents, a copy of waiver and plea forms, if any, the transcript of the proceedings at  
26 the time of the defendant's guilty or nolo contendere plea, if the defendant pleaded guilty  
27 or nolo contendere, and the transcript of the proceedings at the time of sentencing.  
28

29 (2) In all other cases not described in paragraph (1), the clerk shall mail with postage  
30 prepaid, to the prison or other institution to which the person convicted is delivered, a  
31 copy of the charging documents, a copy of the waiver and plea forms, if any, and upon  
32 written request by the Department of Corrections and Rehabilitation or by an inmate, or  
33 by his or her counsel, for, among other purposes on a particular case, appeals, review of  
34 custody credits and release dates, and restitution orders, the transcript of the proceedings  
35 at the time of the defendant's guilty or nolo contendere plea, if the defendant pleaded  
36 guilty or nolo contendere, and the transcript of the proceedings at the time of sentencing.  
37

38 (c)(1) With the consent of the recipient expressed in writing or orally on the record, the  
39 clerk of the court may deliver the documents, or the data contained in the documents,  
40 described in subdivisions (a) and (b) by electronic means rather than by mail.  
41

1 (2) Notwithstanding paragraph (1), upon written request by a person convicted or by his  
2 or her counsel, the clerk shall also mail with postage prepaid, to the prison or other  
3 institution to which the person convicted is delivered, copies of the documents described  
4 in subdivisions (a) and (b).

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**LEG19-02****Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
1.	Child Support Directors Association By Terrie Porter Sacramento, CA	A	<p>General Comments: Education or outreach materials may be necessary to ensure the person incarcerated understands receiving these documents via an electronic delivery is specific to these documents alone and does not remain the method of delivery for all other correspondence. In addition, electronic delivery, as noted, can be challenging to an incarcerated recipient so including physical mail as an option, upon request is preferred. Implementation of this process could result in savings for the clerk of the court in both staffing time and costs associated to postage, and materials necessary to generate all of the copies (paper, toner, etc).</p> <p>Request for Specific Comments: Does the proposal appropriately address the stated purpose? Yes while including options for potential limitations for incarcerated individuals. The committee considered the following alternatives to the language proposed. Are either of these alternatives preferable to the proposed language, or is the proposed language preferable? Why? The proposed language is preferred. It is clearer with the incarcerated individuals being able to opt-in for electronic delivery while also still having the option to receive mailed documents upon request.</p>	The committee appreciates the support and the comments.
2.	Orange County Bar Association By Deirdre Kelly President P.O. Box 6130	A	<p>Agree with the proposal as stated.</p> <p>1) Does the proposal appropriately address the stated purpose?</p>	The committee appreciates the support and the comments. The committee will consider creating a form to capture alternate electronic mail or mailing address.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**LEG19-02****Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
	Newport Beach, CA 92658		<p>Yes. The proposal’s objective is to reduce reliance on paper and improve efficiency by providing an electronic option where paper distribution is currently required. It advances the judicial branch goal of promoting rule and legislative changes that facilitate the use of technology in the courts.</p> <p>2) Comment on the alternatives to current proposal. The listed alternatives are inferior to the one proposed. Alternative 1 is missing an if/then statement to clarify the second part and is confusing. It makes it obligatory to mail the documents should the defendant be ineligible to receive them electronically. The current proposal allows a defendant to opt in for both electronic and paper documentation, so seems to address ineligibility for electronic transmission by giving the defendant the option of regular mail.</p> <p>Alternative 2 requires the court to provide paper copies no matter what, which seems at odds with the stated purpose of the proposal to move toward electronic distribution.</p> <p>3) How might we address electronic mail being returned? One way to address returned emails is for the forms/rule of court (not yet proposed) to include alternative email/mailing addresses in case the primary email or mailing address is not valid.</p>	
3.	Superior Court of California, County of Orange	AM	As far as we are aware, the only time the court is sending information via email is in response to a	The committee appreciates the support and the comments. The court raised a concern that “The

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**LEG19-02**

**Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
	<p>By Randy Montejano Courtroom Operations Supervisor Westminster, CA</p>		<p>record or copy request, not as part of the business of the court as a case progresses from initiation to adjudication to appeal. The proposed legislation could impact sensitive documentation, such as transcripts or confidential information. If the court chooses to opt-in to electronic delivery, steps should be implemented to ensure the email address provided by an agency and/or party is current and correct.</p> <p>Request for Specific Comments</p> <ul style="list-style-type: none"> <li>• Does the proposal appropriately address the stated purpose? Yes, purpose is stated clearly.</li> <li>• The committee considered the following alternatives to the language proposed. Are either of these alternatives preferable to the proposed language, or is the proposed language preferable? Why? Proposed language seems sufficient. Defense can request in writing that documents be sent via mail to prison.               <ul style="list-style-type: none"> <li>o Alternative 1: (c)(1) With the consent of the recipient, the clerk of the court may deliver the documents, or the data contained in the documents, described in subdivisions (a) and (b) by electronic means rather than by mail.</li> <li>(2) Notwithstanding paragraph (1), the person convicted is not eligible to receive electronic delivery of the documents, or the data contained in the documents, described in subdivisions (a) and (b), and the clerk of the court must mail with postage prepaid, to the prison or other institution to which the person convicted is delivered, copies of the documents described in subdivisions (a) and (b).</li> </ul> </li> </ul>	<p>proposed language in the statute does not make clear that electronic delivery is not a requirement for the court.” The statute is written using permissive, not mandatory language. Specifically, “With the consent of the recipient, the clerk of the court <i>may</i> deliver the documents, or the data contained in the documents . . . by electronic means rather than by mail.” The use of “may” rather than “must” indicates that the amended language is not imposing a requirement on courts to offer electronic delivery.</p> <p>The court commented that a form may be helpful for documenting consent and the committee will consider creating an appropriate form.</p> <p>The court commented that direction would be helpful on what the court should do in the event an electronic transmission turns out to be undeliverable. The committee considered this issue and determined this is something that could be handled through local policy. The statute does not address what to do if a mailed delivery fails so it seems unnecessary to do so for electronic delivery. However, if it turns out that this does need to be addressed at a state rather than local level in the future, it could be addressed by statewide rule.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**LEG19-02****Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
			<p>o Alternative 2: (c)(1) With the consent of the recipient, the clerk of the court may deliver the documents, or the data contained in the documents, described in subdivisions (a) and (b) by electronic means rather than by mail.</p> <p>(2) Notwithstanding paragraph (1), the clerk of the court must also mail with postage prepaid, to the prison or other institution to which the person convicted is delivered, copies of the documents described in subdivisions (a) and (b).</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <ul style="list-style-type: none"> <li>• Would the proposal provide cost savings? If so, please quantify. Postage costs for transcripts in particular would be significant.</li> <li>• Does the proposal raise any concerns on means of transferring data? If so, should those concerns be addressed in statute or in some other way? The proposed language in the statute does not make clear that electronic delivery is not a requirement for the court. Perhaps you may consider adding language to the statute that explains that this applies to courts that have the current capability for electronic delivery.</li> <li>• Does the proposal raise any concerns on data being sent back to the court by the recipient (e.g., if the court delivers an electronic copy of a document by e-mail to a convicted person and the convicted person replies to that e-mail in an attempt to communicate with the court)? If so, should those concerns be addressed in statute or in some other way? Yes, it should be made clear that</li> </ul>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



**LEG19-02****Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
			<p>the option of electronic delivery is for the clerk of the court and not the recipient.</p> <ul style="list-style-type: none"> <li>• The proposed amendment does not prescribe any particular method for how consent from the recipient would be documented. Is this something that should be addressed in statute, a rule of court, or in some other way? A form could be helpful, especially for defendants represented by private counsel or defendants in pro per. Could also be helpful if agencies are required to submit something with each case to ensure the court has the correct email address when staff or departments shift.</li> <li>• The proposed amendment does not address what the court should do if someone consents to electronic delivery, but when the court electronically transmits the document, it is undeliverable (e.g., the court emails the documents to an address the recipient provided, but then gets a message back that the email was undeliverable). Is this something that should be addressed in statute, a rule of court, or in some other way? Direction would be helpful. Is it the court’s responsibility to then send via mail? Or is the recipient responsible for following up if documentation is not received, as the email information provided is likely incorrect?</li> </ul>	
4.	<p>Superior Court of California, County of San Diego By Mike Roddy, Executive Officer Central Courthouse 1100 Union Street San Diego, California 92101</p>	AM	<p>1. Does the proposal appropriately address the stated purpose?</p> <p>In theory, the idea of being able to serve such documents electronically does serve the stated purpose. However, practically speaking, unless a</p>	<p>The committee appreciates the court’s support and comments. The court expressed workload concerns where the court would have to mail documents it had already electronically delivered to an inmate. The court recommended the inmate be required to provide good cause why they need</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**LEG19-02**

**Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)**

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committee Responses
			<p>particular court has adopted a local rule allowing electronic filing in criminal cases (and, even then, it would not be mandatory, per Cal. Rules of Court, rule 2.253, subd. (a)), these documents are still going to be filed by the parties in paper format. As such, the clerk will have to take the filed documents and scan them before emailing them. The process of scanning, saving, and emailing is often the same or more time consuming than the process of copying and mailing the documents. However, this court understands the desire to move to a paperless court and that the new rules are permissive and not mandatory. As such, each court can decide whether it makes sense based on their technological limitations.</p> <p>In addition, this issue could be resolved by courts implementing a local rule requiring parties to serve courtesy electronic copies of the filed documents with the courtroom clerk.</p> <p>2. Consideration of alternative language.</p> <p>The court has some concerns about allowing an inmate to opt in for email, but then also be able to send a written request for these documents without having to make any showing on why a duplicate hard copy is necessary and/or what efforts he or she has made to secure the emailed version. Even if an inmate receives an electronic copy, he or she is likely to request a hard copy from the court be mailed. After all, if the court mails a copy, an inmate does not have to pay the cost of printing the</p>	<p>a mailed copy. The committee understands the workload concern. However, this should be ameliorated by the discretionary nature of the electronic delivery option. The amendment allows, but does not require, a court to provide the materials by electronic means. Mail-only is an option a court could choose for materials sent to inmates. The committee considered the court’s recommendation for a good cause provision and determined that such a provision would increase workload. First, inmate efforts to demonstrate good cause would likely result in individual filings that would be lengthy in nature. Second, the court would have to make a good cause determination in every instance, even where good cause is not found, in addition to mailing documents where good cause is found. Accordingly, the committee decided against adding a good cause provision.</p> <p>The court also recommended the proposed amendment require consent to be in writing. The committee considered this and determined written consent would be an effective means of documenting consent. In addition, the committee discussed oral consent on the record as an alternative. The committee will recommend a revision where consent must be written or made on the record.</p>

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**LEG19-02****Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
			<p>emailed version. Thus, courts will likely only be doubling their work by having to send electronic copies and mail copies.</p> <p>This court suggests either using Alternative 1, which provides for maintaining only mail service for inmates. The other option would be to keep the language as proposed; however, add language requiring that an inmate who previously opted in for electronic service provide good cause for also needing a hard copy be mailed.</p> <p>It should be noted that these documents are also being sent to CDCR for their records. These documents will be placed in an inmates Central File (C-File), which an inmate has a right to review. (Cal. Code of Reg., §3370, subd. (c).) As such, even if an inmate were to opt into email service, but then have trouble accessing it, the documents would be available to them through their own C-File in prison. In addition, copies are also being provided to an inmate’s trial attorney. Upon request, the attorney must supply an inmate with a copy of his/her file. (Rules of Professional Conduct, rule 3-700, subd. (d).) In sum, if an inmate opts in for email service, then the court should not be required to also send a duplicate copy via mail. An inmate has other means by which to obtain such a records, if he or she has an issue accessing email. If this is a concern, then it is recommended that the policy be that inmates only get mailed copies.</p>	

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**LEG19-02**

**Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction (Amend Pen. Code, § 1203.01)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
			<p>3. Would the proposal provide cost savings? If so, please quantify.</p> <p>The cost saving would be minimal because, as mentioned above, clerks would still need to scan the filed documents before emailing them out and inmates are likely to request written copies in addition to email copies.</p> <p>4. Does the proposal raise any concerns on means of transferring data? If so, should those concerns be addressed in statute or some other way?</p> <p>Any time that data is transferred via email, there is a security concern. However, such a concern could be alleviated by including language that the court may also use an approved electronic filing service provider.</p> <p>5. The proposed amendment does not prescribe any particular method for how consent from the recipient would be documented. Is this something that should be addressed in statute, a rule of court, or in some other way?</p> <p>Yes. It is recommended that the rule itself use language to the effect of: “With the written consent of the recipient.”</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on November 14–15, 2019

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Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Signatures and Consistent Fee Provisions With Electronic Filing and Service	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Code Civ. Proc., § 1010.6	January 1 2021
Recommended by	Date of Report
Information Technology Advisory Committee	July 18, 2019
Hon. Sheila F. Hanson, Chair	Contact
	Andrea L. Jaramillo, 916-263-0991 <a href="mailto:andrea.jaramillo@jud.ca.gov">andrea.jaramillo@jud.ca.gov</a>

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### **Executive Summary**

The Information Technology Advisory Committee recommends sponsoring legislation to amend Code of Civil Procedure section 1010.6, which governs electronic filing and service in civil matters in the trial courts. The proposal would (1) create consistency in fee provisions by allowing courts to recover no more than their actual costs regardless of whether electronic filing and service are permitted by local rule, required by court order, or required by local rule; and (2) account for signatures made not under penalty of perjury by persons other than the filer.

### **Recommendation**

The Information Technology Advisory Committee recommends that the Judicial Council sponsor legislation to amend Code of Civil Procedure section 1010.6, effective January 1, 2021, to:

1. Allow courts to recover no more than the actual costs they incur for permissive electronic filing and electronic filing by court order; and
2. Account for electronic signatures not made under penalty of perjury by persons other than the filer.

The text of the statute as amended is attached at pages 6–8.

## Relevant Previous Council Action

Since January 1, 2000, section 1010.6<sup>1</sup> has authorized permissive electronic filing and service in the superior courts. (Stats. 1999, ch. 514, § 1.) Over the years, the Judicial Council has sponsored legislation to amend section 1010.6. In 2012, the Legislature enacted Assembly Bill 2073 (Stats. 2012, ch. 320), which authorized the Superior Court of Orange County to implement a mandatory electronic filing and service pilot project. AB 2073 also instructed the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service in specified civil actions. On adoption of those rules, AB 2073 allowed superior courts to require mandatory electronic filing by local rule. In 2017, the Judicial Council sponsored Assembly Bill 976 (Stats. 2017, ch. 319), which the Legislature enacted and which, among other things, provided for use of electronic signatures under penalty of perjury on electronically filed documents and codified provisions on mandatory electronic service that had been in the California Rules of Court.

## Analysis/Rationale

### Cost recovery

Section 1010.6 provides statutory authority for electronic filing and service. The trial courts may adopt local rules permitting or requiring electronic filing subject to certain conditions. (§ 1010.6(b), (d).) A court may also require electronic filing and service by court order in certain types of cases if it has adopted local rules conforming to the statutory conditions for permissive electronic filing. (§ 1010.6(c).) When a court permits electronic filing by local rule, it may charge a fee for payment processing not to exceed the costs of processing a payment. (§ 1010.6(b)(7).) If a court permits electronic filing by local rule, it may also require electronic filing and service by court order, but the provision on ordering electronic filing and service does not directly address costs. (§ 1010.6(c).) A court may also require electronic filing and service by local rule, and in that case, it “may charge fees of no more than the actual cost” except in instances where the court deems waiving the fees appropriate. (§ 1010.6(d).) Accordingly, what costs a court can recover vary depending on whether electronic filing and service are permitted by local rule, required by court order, or required by local rule.

The provisions for electronic filing and service *permitted by local rule* are in subdivision (b) of section 1010.6, whereas the provisions for electronic filing and service *required by court order* and *required by local rule* are in subdivisions (c) and (d), respectively. The proposed amendments add a new subdivision, (b)(8), to allow courts to recover actual costs when electronic filing and service are permitted by local rule. The language of proposed subdivision (b)(8) is taken from existing subdivision (d). Because subdivision (d) is subject to the requirements and conditions of subdivision (b), the proposal removes the existing language from subdivision (d) that is identical to the new language in proposed subdivision (b)(8).

To improve the continuity of the fee provisions, the proposal also reorders subdivision (b)(7) to be placed before existing subdivision (b)(6). The language in proposed new subdivision (b)(6) is

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<sup>1</sup> This and all subsequent statutory references are to the Code of Civil Procedure, unless otherwise stated.

the same as that in existing subdivision (b)(7), which covers recovery of payment processing fees, except that it strikes “the court” from the subdivision. Because the language in subdivision (b)(8) is broad enough to encompass payment processing fees, keeping “the court” in proposed subdivision (b)(6) is unnecessary. Finally, the proposal adds to subdivision (c) that it is subject to the requirements and conditions of subdivision (b) and subdivision (f), which cover rule making for mandatory electronic filing. This language matches that in existing subdivision (d) and makes subdivisions (c) and (d) more consistent.

### **Document signing provisions**

Under section 1010.6, “When a document to be filed requires the signature of any person, not under penalty of perjury, the document shall be deemed to have been signed by the person who filed the document electronically.” (§ 1010.6(b)(2)(A).) Although this provision initially states that it applies when a signature of *any* person is required, the scope is limited by the language, “the document shall be deemed to have been signed *by the person who filed.*” As such, the provision does not account for a situation when someone signs a document not under penalty of perjury, the document is to be filed electronically, and the filer and signer are different people.

The proposed amendment preserves the status quo when the filer is the signer, but also accounts for documents not signed under penalty of perjury when the filer and signer are different people. The amendment leaves the specific processes for signatures not under penalty of perjury when the filer and signer are different people to the rules of court just as is the case for documents electronically signed under penalty of perjury.

### **Policy implications**

The proposal is consistent with two goals of the Judicial Council’s *Strategic Plan for Technology 2019–2022*. One goal is to promote the digital court to “[i]ncrease access to the courts, administer justice in a timely and efficient manner, and optimize case processing by supporting a foundation for the digital court and by implementing comprehensive digital services for the public and for justice partners.” Another goal is to “[p]romote the modernization of statutes . . . to facilitate the use of technology in court operations and the delivery of court services.” Electronic filing is available in about half of trial courts. Allowing recovery of actual costs for permissive electronic filing may facilitate courts’ expansion in this area either themselves or through the statewide electronic filing program.

As more courts that do have electronic filing make electronic filing mandatory, courts can reduce the burden on litigants to retain paper records by allowing electronic signatures on electronically filed documents. For example, the California Department of Child Support Services (DCSS) has noted that the ability to use electronic signatures would have a significant favorable impact on it and local child support agencies because they would no longer need to engage in the labor-intensive process of obtaining signatures in person or through the mail on the thousands of stipulations they file every year.

## **Comments**

The committee circulated the proposal for public comment between April 11 and June 7 2019. Five commenters responded to the invitation to comment: (1) Superior Court of San Diego County, which agreed with the proposal; (2) DCSS, which agreed with the proposal; (3) Orange County Bar Association, which agreed with the proposal if modified; and (4) Child Support Directors Association of California (CSDA), which agreed with the proposal if modified, and (5) Superior Court of Orange County, Juvenile Court and Family Law Divisions, which did not take a position.

The CSDA recommended that the order of subdivision (b)(7) be changed to improve the continuity of the fee topics relative to the surrounding provisions. The committee agreed and moved existing subdivision (b)(7) above existing subdivision (b)(6). This revision reorders the numbering and does not alter the substance of the proposed amendments.

Internally, the committee discussed the accuracy of using the term “a rule of court” in the proposed amendment to section 1010.6(b)(2)(A)(ii), determined that “the California Rules of Court” was the more appropriate term, and edited the language accordingly.

## **Alternatives considered**

### ***Cost recovery provisions***

The committee considered maintaining the status quo, which would continue different cost recovery provisions depending on whether electronic filing and service are permitted by local rule, required by court order, or required by local rule. The committee preferred to make the cost recovery provisions consistent and allow courts to recover no more than actual costs. Doing so may encourage more courts to offer electronic filing or expand the scope of their offerings. Currently, only about half of trial courts provide electronic filing and service either directly, through vendor services, or through a combination of vendor and in-house services.

### ***Document signing provisions***

The committee considered addressing this issue only in the rules of court. However, because section 1010.6 states that it governs the signature of *any person* not under penalty of perjury, but then specifically narrows to address only the filer, amending section 1010.6 would ensure consistency between the controlling statute and the rules of court.

## **Fiscal and Operational Impacts**

### **Cost recovery provisions**

Courts can already recover actual costs when electronic filing and service are *required* by local rule. The main fiscal impacts, therefore, would be with electronic filing and service *permitted* by local rule. Where courts already permit electronic filing and service by local rule, the proposal may reduce costs for courts because those costs would be recoverable. The proposal may also make a court’s expansion of the scope of electronic filing and service more feasible. Where courts already permit electronic filing and service by local rule, costs to litigants already using permissive electronic filing may increase because costs are currently limited to recovery of



payment processing fees. Where courts do not currently permit electronic filing and service, the proposal may make it more feasible for more courts to do so. Because electronic filing and service permitted by local rule are optional, litigants would still have the choice to use paper.

The committee sought specific comments from courts on fiscal and operational impacts. The Superior Court of San Diego County commented that it did not believe the proposal would provide a cost savings but thought that the proposal could potentially make it more feasible for courts that do not have local rules to permit electronic filing and service to do so “provided the court has the resources to implement e-filing.” The court thought the proposal could encourage improvement or expansion of electronic filing and service and could increase e-filing by self-represented litigants, but specifically only in courts that have direct electronic filing.

Finally, the Judicial Council has been developing a statewide electronic filing program on behalf of the trial courts. Through the program, the council is establishing master agreements with electronic filing manager vendors, and courts can participate in the agreements if they choose. Court program costs are currently recoverable with mandatory electronic filing by local rule. The amendments would also allow recovery of actual costs for permissive electronic filing and mandatory electronic filing by court order.

### **Document signing provisions**

DCSS noted that it expects to increasingly need to electronically file documents—such as stipulations—where the signature lines will be signed by other parties. DCSS commented, “As these scenarios will occur frequently . . . this will have a significant impact on the child support program and the clarity in the law will be necessary and extremely helpful.”

### **Attachments and Links**

1. Code of Civil Procedure section 1010.6, as amended, at pages 6–8
2. Chart of comments, at pages 9–15
3. Link A: Judicial Council of California, *Strategic Plan for Technology 2019–2022*, [www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf](http://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf)

Section 1010.6 of the Code of Civil Procedure would be amended, effective January 1, 2021, to read:

1 **§ 1010.6**

2  
3 (a) \* \* \*

4  
5 (b) A trial court may adopt local rules permitting electronic filing of documents, subject to rules  
6 adopted pursuant to subdivision (e) and the following conditions:

7  
8 (1) A document that is filed electronically shall have the same legal effect as an original paper  
9 document.

10  
11 (2)(A) When a document to be filed requires the signature of any person, not under penalty of  
12 perjury, the document shall be deemed to have been signed by ~~the~~ that person who filed the  
13 ~~document electronically.~~ if filed electronically and if either of the following conditions is  
14 satisfied:

15  
16 (i) The filer is the signer.

17  
18 (ii) The person has signed the document pursuant to the procedure set forth in the California  
19 Rules of Court.

20  
21 (B) When a document to be filed requires the signature, under penalty of perjury, of any person,  
22 the document shall be deemed to have been signed by that person if filed electronically and if  
23 either of the following conditions is satisfied:

24  
25 (i) The person has signed a printed form of the document before, or on the same day as, the date  
26 of filing. The attorney or other person filing the document represents, by the act of filing, that the  
27 declarant has complied with this section. The attorney or other person filing the document shall  
28 maintain the printed form of the document bearing the original signature until final disposition of  
29 the case, as defined in subdivision (c) of Section 68151 of the Government Code, and make it  
30 available for review and copying upon the request of the court or any party to the action or  
31 proceeding in which it is filed.

32  
33 (ii) The person has signed the document using a computer or other technology pursuant to the  
34 procedure set forth in a rule of court adopted by the Judicial Council by January 1, 2019.

35  
36 (3) Any document received electronically by the court between 12:00 a.m. and 11:59:59 p.m. on  
37 a court day shall be deemed filed on that court day. Any document that is received electronically  
38 on a noncourt day shall be deemed filed on the next court day.

1 (4) The court receiving a document filed electronically shall issue a confirmation that the  
2 document has been received and filed. The confirmation shall serve as proof that the document  
3 has been filed.

4  
5 (5) Upon electronic filing of a complaint, petition, or other document that must be served with a  
6 summons, a trial court, upon request of the party filing the action, shall issue a summons with the  
7 court seal and the case number. The court shall keep the summons in its records and may  
8 electronically transmit a copy of the summons to the requesting party. Personal service of a  
9 printed form of the electronic summons shall have the same legal effect as personal service of an  
10 original summons. If a trial court plans to electronically transmit a summons to the party filing a  
11 complaint, the court shall immediately, upon receipt of the complaint, notify the attorney or party  
12 that a summons will be electronically transmitted to the electronic address given by the person  
13 filing the complaint.

14  
15 (6) A fee, if any, charged by an electronic filing manager or an electronic filing service provider  
16 to process a payment for filing fees and other court fees shall not exceed the costs incurred in  
17 processing the payment.

18  
19 ~~(6)(7)~~ The court shall permit a party or attorney to file an application for waiver of court fees and  
20 costs, in lieu of requiring the payment of the filing fee, as part of the process involving the  
21 electronic filing of a document. The court shall consider and determine the application in  
22 accordance with Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the  
23 Government Code and shall not require the party or attorney to submit any documentation other  
24 than that set forth in Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the  
25 Government Code. Nothing in this section shall require the court to waive a filing fee that is not  
26 otherwise waivable.

27  
28 ~~(7) A fee, if any, charged by the court, an electronic filing manager, or an electronic filing~~  
29 ~~service provider to process a payment for filing fees and other court fees shall not exceed the~~  
30 ~~costs incurred in processing the payment.~~

31  
32 (8) The court may charge fees of no more than the court's actual cost of the electronic filing and  
33 service of the documents. The court shall waive any fees charged if the court deems a waiver  
34 appropriate, including in instances when a party has received a fee waiver.

35  
36 (c) If a trial court adopts rules conforming to subdivision (b), it may provide by order, subject to  
37 the requirements and conditions stated in subdivision (b) and the rules adopted by the Judicial  
38 Council under subdivision (f), that all parties to an action file and serve documents electronically  
39 in a class action, a consolidated action, a group of actions, a coordinated action, or an action that  
40 is deemed complex under Judicial Council rules, provided that the trial court's order does not  
41 cause undue hardship or significant prejudice to any party in the action.

1 (d) A trial court may, by local rule, require electronic filing and service in civil actions, subject to  
2 the requirements and conditions stated in subdivision (b), the rules adopted by the Judicial  
3 Council under subdivision (f), and the following conditions:  
4

5 (1) The court shall have the ability to maintain the official court record in electronic format for  
6 all cases where electronic filing is required.  
7

8 (2) The court and the parties shall have access to more than one electronic filing service provider  
9 capable of electronically filing documents with the court or to electronic filing access directly  
10 through the court. ~~The court may charge fees of no more than the actual cost of the electronic~~  
11 ~~filing and service of the documents.~~ Any fees charged by an electronic filing service provider  
12 shall be reasonable. ~~The court,~~ An electronic filing manager, or an electronic filing service  
13 provider shall waive any fees charged if the court deems a waiver appropriate, including in  
14 instances where a party has received a fee waiver.  
15

16 (3)-(5) \* \* \*

17  
18 (e)-(g) \* \* \*

19  
20 (g) \* \* \*

**LEG19-01**

**Judicial Council–Sponsored Legislation: Signatures and Consistent Fee Provisions with Electronic Filing and Service (Amend Code Civ. Proc., § 1010.6)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
1.	Orange County Bar Association By Deirdre Kelly President P.O. Box 6130 Newport Beach, CA 92658	AM	The OCBA believes that (a) this proposal does not achieve its purpose of creating consistency in the fee provisions for electronic filing and service, and (b) it does properly account for signatures not made under penalty of perjury by persons other than the filer. The proposal as to fees is inconsistent, ambiguous, and creates more ambiguities for unexplained reasons: (1) as proposed the statute still only allows an electronic service provider to charge a fee “for the costs incurred in processing the payment” of filing and other fees, but changes the legislation to now allow the court to charge a fee “no more than the actual cost of the electronic filing and service of the documents”; as currently written the fees charged by the court and the service provider under CCP §1010.6(b)(7) have the same limitations to the “costs incurred in processing the payment”; perhaps there are logical and fiscal reasons for treating the courts and the service provider differently, but this proposal does not explain, justify, nor analyze any of those difference and misstates a significant purpose of this proposal; and (2) as proposed, only in the case of an electronic service provider functioning under a trial court’s mandatory local rule requirements of CCP §1010.6(d) is the provider limited to charging “reasonable” fees; but a provider operating under the optional local rules of CCP §1010.6(b) has no such limitation nor does a provider operating under the court order rules of CCP §1010.6(c); it is also seemingly inconsistent to not place a similar “reasonable” fee requirement on the courts if such a rule is to exist at all (the “reasonable” fee rule seems fair to litigants but is	<p>The committee appreciates the support and the comments.</p> <p>As to the first point made by OCBA, the “costs in processing a payment” apply only to those costs. “Actual costs” is a broader term and can therefore encompass more than payment processing fees. The actual cost provision in the proposal applies only to the courts. The committee has added a clarifying edit on this point that actual cost is <i>the court’s</i> actual cost. Unlike the courts, private providers such as electronic filing service providers (EFSPs) are not limited to actual costs except for payment processing fees. For example, an EFSP could build profit into its pricing model for services it provides to its users. The purpose of the fee provisions of the proposal is to create consistency by allowing courts to recover no more than their actual costs regardless of whether electronic filing and service is permitted by local rule, required by court order, or required by local rule. Currently, the fee provisions vary as applied to the courts.</p> <p>As to the second point, the proposal was not designed to impact EFSPs. There does not appear to be a need for the committee to address fees charged by EFSPs in a legislative proposal. When electronic filing and service are optional, litigants can simply choose not to use an EFSP. There is a stronger argument when electronic filing and service are mandated by court order, but even then, litigants must be exempted if electronic</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**LEG19-01****Judicial Council–Sponsored Legislation: Signatures and Consistent Fee Provisions with Electronic Filing and Service  
(Amend Code Civ. Proc., § 1010.6)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
			<p>ambiguous and difficult to interpret); and (3) although a statutory amendment would take precedence, the Judicial Council should reference and explain that Rule 8.73 of the California Appellate Rules would have to be changed since it now allows an electronic service provider to charge a “reasonable fee” in addition to the court’s own filing fees and several other rules provisions such as Rule 8.76 pertaining to filing fees would be rendered inconsistent or superfluous with this legislation.</p> <p>The Judicial Council request for comment on what impact the proposal would have on self-represented litigants is answered by a simple reference to CCP §1010.6(d)(4) which provides that “unrepresented persons are exempt from mandatory electronic filing and service.” This provision should be added to CCP §1010.6(c), which deals with court-ordered mandatory filing and service, for purposes of consistency.</p>	<p>filing and service cause undue hardship or significant prejudice.</p> <p>As to the third point, the fee provisions of section 1010.6 are found in subdivisions (b) and (d), which apply to the trial courts, not the appellate courts. Therefore, the appellate rules would not need to be changed.</p>
2.	<p>Superior Court of California, County of Orange Juvenile Court and Family Law Divisions By Cynthia Beltrán Administrative Analyst Family Law and Juvenile Court</p>	NI	<p>After review, it was determined this change would not impact our Family Law or Juvenile case types. Our case management system vendor, Tyler Technologies, is our electronic filing manager. All signatures and fees are collected through them, then directed to the Court.</p>	The committee appreciates the comments.
3.	<p>Superior Court of California, County of San Diego By Mike Roddy, Executive Officer</p>	A	<p>1. Does the proposal appropriately address the stated purpose? Yes.</p>	The committee appreciates the support and the comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**LEG19-01****Judicial Council–Sponsored Legislation: Signatures and Consistent Fee Provisions with Electronic Filing and Service  
(Amend Code Civ. Proc., § 1010.6)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
	Central Courthouse 1100 Union Street San Diego, California 92101		<p>2. What impact would the proposal have on self-represented litigants and their access to permissive electronic filing and service?</p> <p>May increase e-filings by self-represented litigants in courts that directly providing e-filing.</p> <p>3. Would the proposal provide cost savings? If so, please quantify.</p> <p>No.</p> <p>4. If the court does not currently have local rules permitting electronic filing and service, would the proposal make it more feasible for the court to do so?</p> <p>Potentially, provided a court has the resources to implement e-filing.</p> <p>5. If the court currently has local rules permitting electronic filing and service, would the proposal help the court to improve or expand electronic filing and service?</p> <p>It may, if the court directly provides e-filing. It does not appear that it would impact courts that utilize an electronic filing service provider.</p>	
4.	California Department of Child Support Services By Lara Racine, Attorney III	A	The California Department of Child Support Services (DCSS) has reviewed the proposal	The committee appreciates the support and the comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**LEG19-01**

**Judicial Council–Sponsored Legislation: Signatures and Consistent Fee Provisions with Electronic Filing and Service  
(Amend Code Civ. Proc., § 1010.6)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
	P.O. Box 419064 Rancho Cordova, California 95741		<p>identified above for potential impacts to the child support program, the local child support agencies (LCSAs), and our case participants. DCSS is in support of the proposals made in this invitation.</p> <p>REQUEST FOR SPECIFIC COMMENTS: 1. Does the proposal appropriately address the stated purpose?</p> <p>Yes, the proposal is clear as to intent and purpose. The background section was well stated, especially as to the proposed amendment to Code of Civil Procedure Section 1010.6.</p> <p>2. What impact would the proposal have on self-represented litigants and their access to permissive electronic filing and service?</p> <p>The proposal provides further clarity and consistency as to fees for electronic filing and service, as well as the process and requirements for electronically filing documents with signature components. Should a self-represented litigant choose to electronically file documents with the court, this proposal will serve them in that it clarifies language that was not accurate for all e-filing scenarios.</p> <p>GENERAL COMMENTS: Cost Recovery DCSS, as a government entity, is not subject to filing fees per Government Code Section 6103.9.</p>	

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**LEG19-01****Judicial Council–Sponsored Legislation: Signatures and Consistent Fee Provisions with Electronic Filing and Service  
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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
			<p>SIGNATURES ONE-FILED DOCUMENTS NOT SIGNED UNDER PENAL TY OF PERJURY</p> <p>DCSS is a current e-filer with several Superior Courts statewide. When our LCSAs e-file legal documents today, the signature lines on the enabled forms are meant to be signed by the worker generating the form; therefore, the current language of Code of Civil Procedure Section 1010.6(b)(2)(A) works. However, with the expansion of our e-filing program, and in the future when we begin toe-file documents such as stipulations, where the signature lines will be signed by other parties, the current language will be incorrect and the clarifying language proposed will account for those situations. As these scenarios will occur frequently once stipulations and other similar forms are added to e-filing via DCSS, this will have a significant impact on the child support program and the clarity in the law will be necessary and extremely helpful.</p>	
5.	<p>Child Support Directors Association By Terrie Porter Sacramento, California</p>	AM	<p>General comments: Grouping like provisions may make the code section clearer. Keep the fees discussion in one area and waivers in another.</p> <p>CCP Sec. 1010.6(b)(7) as proposed speaks to fees that can be charged by electronic filing manager or electronic filing service manager to process payment for filing fees. This section seems out of place and doesn't clearly link to the section before or after as each of those sections is speaking to fee waiver</p>	<p>The committee appreciates the support and the comments.</p> <p>Regarding the order of the subdivisions, based the comment, the committee considered whether there was a more logical ordering to the proposed amendments. The committee agreed to move subdivision (b)(7) before subdivision (b)(6) to improve the continuity of the topics.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**LEG19-01**

**Judicial Council–Sponsored Legislation: Signatures and Consistent Fee Provisions with Electronic Filing and Service (Amend Code Civ. Proc., § 1010.6)**

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committee Responses
			<p>options. Can subsection (7) be located elsewhere or swapped with (8) so there's some continuity to provision topics?</p> <p>CCP Sec. 1010.6(d)(2) as proposed notes "The court and the parties shall have access to more than one electronic filing service provider capable of electronically filing documents with the court or to electronic filing access directly through the court. Any fees charged by an electronic filing service provider shall be reasonable..." More clearly defining the term reasonable or what is considered reasonable will help create more consistency between electronic filing service provider fees and costs.</p> <p>Request for Specific Comments: Does the proposal appropriately address the stated purpose?</p> <p>As proposed, this change will create consistent court fees when courts are allowing electronic filing. As noted, the courts are only able to recover actual costs of the electronic filing. It does not necessarily create consistency between electronic filing service providers, see General Comments regarding CCP Sec. 1010.6(d)(2). What impact would the proposal have on self-represented litigants and their access to permissive electronic filing and service?</p> <p>This change will provide the opportunity of electronic filing and service for self-represented</p>	<p>Regarding “reasonable” fees allowed to be charged by EFSPs, the language on reasonable fees is part of the current statute. The proposal did not include the meaning of the term within its scope of amendments to subsection (d)(2). Rather, the only amendment to (d)(2) was to strike language that was unnecessary because the language had been moved to proposed subsection (b)(8).</p> <p>Regarding the impact on self-represented litigants, the concern CSDA raises about imposing prohibitive costs on self-rep is already addressed in the current version of 1010.6. Subdivision (d)(4) specifically exempts “unrepresented persons” from mandatory electronic filing and service, and the proposed amendments do not change this exemption.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**LEG19-01**

**Judicial Council–Sponsored Legislation: Signatures and Consistent Fee Provisions with Electronic Filing and Service  
(Amend Code Civ. Proc., § 1010.6)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
			litigants, but it may be cost prohibitive depending upon the court's discretion with and/or use of waivers. If electronic filing is mandated by the courts, then this may result in increased costs to the self-represented litigant. If it is offered as an option and/or waivers are allowable, then the anticipated impact will be diminished.	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

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Title

Rules and Forms: Electronic Filing and Service

Rules, Forms, Standards, or Statutes Affected  
Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257

Recommended by  
Information Technology Advisory Committee  
Hon. Sheila F. Hanson, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2020

Date of Report

July 18, 2019

Contact

Andrea L. Jaramillo, 916-263-0991  
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### Executive Summary

The Information Technology Advisory Committee recommends the Judicial Council amend several rules of court relating to electronic filing and service that implement legislation that requires parties and other persons provide express consent to electronic service. In particular, the amendments (1) specify how notice of consent to electronic service is to be given, (2) provide example language for consent, and (3) require electronic filing service providers and electronic filing managers to transmit a person's consent to the courts. In addition, the committee recommends amendments to the rule governing signatures on electronically filed documents. The amendments will reduce the reliance on paper for signatures and include other persons in addition to the parties within the scope of the rule.

### Recommendation

The Information Technology Advisory Committee recommends the Judicial Council, effective January 1, 2020:

1. Amend rule 2.251 to specify how notice of consent to electronic service is to be given, and add an advisory committee comment on example language for consent;

2. Amend rule 2.255 to require electronic filing service providers and electronic filing managers to transmit a person's consent to the court; and
3. Amend rule 2.257 to include requirements for electronic signatures on documents signed under penalty of perjury when the declarant and filer are not the same person, allow electronic signatures of opposing parties, include other persons in addition to the parties within the scope of the rule, and add an advisory committee comment about electronic signatures.

The text of the amended rules is attached at pages 8–11.

### **Relevant Previous Council Action**

In 2017, the Judicial Council sponsored Assembly Bill 976 (Stats. 2017, ch. 319), which amended provisions of Code of Civil Procedure section 1010.6 to (1) authorize the use of electronic signatures for signatures made under penalty of perjury on electronically filed documents, (2) provide for a consistent effective date of electronic filing and service across courts and case types, (3) consolidate the mandatory electronic filing provisions, and (4) codify provisions that are currently in the California Rules of Court on mandatory electronic service, effective date of electronic service, protections for self-represented persons, and proof of electronic service. The Legislature amended AB 976 to add a provision requiring that starting January 1, 2019, parties and other persons must provide express consent to permissive electronic service. Effective January 1, 2019, the Judicial Council amended rules 2.251 and 2.257 to account for the new requirements of Code of Civil Procedure section 1010.6.

### **Analysis/Rationale**

#### **Rules 2.251 and 2.255**

In 2017, the Legislature amended Code of Civil Procedure section 1010.6 (section 1010.6) to require all persons to provide express consent to electronic service. Rule 2.251(b) had previously allowed the act of electronic filing alone to act as evidence of consent to receive electronic service for represented persons, but the 2017 amendments to section 1010.6 eliminated this option. Section 1010.6 does, however, allow a person to provide express consent electronically by “manifesting affirmative consent through electronic means with the court or the court’s electronic filing service provider, and concurrently providing the party’s electronic address with that consent for the purpose of receiving electronic service.” (§ 1010.6(a)(2)(A)(ii).)

The Legislature did not provide for what it means to “manifest affirmative consent through electronic means.” To fill this gap, the Judicial Council amended rule 2.251(b), effective January 1, 2019, to provide a process for manifesting affirmative consent through electronic means by allowing a party to file a form or to consent through an electronic filing service provider (EFSP). One of the objectives of the EFSP option was to replicate the prior process of consenting by the act of electronic filing while also ensuring, consistent with Legislative direction, that parties and other persons expressly consented. Neither section 1010.6 nor the electronic filing and service rules of court detail how notice is to be given to the court, as well as to other parties or persons in

the case, that a party or other person has provided express consent. The Information Technology Advisory Committee (ITAC) sought specific comments on these issues when the amendments to rule 2.251(b) circulated for comment in 2018. The Superior Court of San Diego County commented:

Our court proposes that [ITAC] create standard language for parties to consent to service by the method outlined in 2.251(b)(1)(C)(i). The court or court's electronic filing service providers could then include that language in their filing portal, which would allow parties to consent by accepting the terms. A copy of the acceptance would then be transmitted to the court by the service provider. If express consent is provided by filing a Consent to Electronic Service and Notice of Electronic Service Address (JC Form # EFS-005-CV) as indicated in 2.251(b)(1)(C)(ii), the court is provided notice through the filing. Our court proposes that the rule include that if a party manifests affirmative consent by either of the methods listed in 2.251(b)(1)(C), he/she is required to serve notice on all other parties.

The committee found the recommendations helpful and added amending the rules to its annual agenda for 2019. The proposed amendments to rule 2.251 would require parties or other persons who have "manifested affirmative consent through electronic means" to serve notice of this consent on all parties and other persons. The proposal would also add an advisory committee comment citing an example of language for consenting to electronic service. The proposed amendments to rule 2.255 would require EFSPs and electronic filing managers (EFMs) to promptly transmit to the court a party's or other person's acceptance of consent to receive electronic service.

#### **Rule 2.257**

Effective January 1, 2019, consistent with the statutory requirement, the Judicial Council adopted an amendment to subdivision (b) of rule 2.257 to create a procedure for electronic signatures on electronically filed documents signed under penalty of perjury. Under that procedure ("When a document to be filed electronically provides for a signature under penalty of perjury of any person, the document is deemed to have been signed by that person if filed electronically provided that either of the following conditions is satisfied . . ."), the person signs with an electronic signature and declares under penalty of perjury under the laws of the state of California that the information submitted is true and correct. (Cal. Rules of Court, rule 2.257(b)(1).)

The proposed amendments to subdivision (b) would add requirements for electronic signatures on electronically filed documents signed under penalty of perjury when the declarant is not the filer. Because electronic signatures are simple to create, there is more of a concern about their validity if the filer and the signer are different people. Under the proposed requirements, the electronic signature must be (1) unique to the declarant, (2) capable of verification, (3) under the sole control of the declarant, and (4) linked to data in such a manner that if the data are changed,

the electronic signature may be declared invalid by the court. These requirements are designed to ensure that the application of the signatures is the act of the person signing, can be proven as such, and may be invalidated if the document signed is found by the court to have been improperly altered after being electronically signed. The requirements in the proposed rule are similar to those for digital signatures under Government Code section 16.5(a). A digital signature is a type of secure electronic signature that may be used in communications with public entities. (Gov. Code, § 16.5.) The first three requirements in the proposed rule are the same as for a digital signature, but the fourth is different. Under Government Code section 16.5(a)(4), a digital signature must be “linked to data in such a manner that if the data are changed, the digital signature *is* invalidated.” (Emphasis added.) Under the proposed rule, instead of the electronic signature being invalidated automatically, the court has discretion to decide whether the signature should be declared invalid. Also unlike a digital signature, the proposed rule does not require electronic signatures to conform to the Secretary of State’s regulations, which prescribe the use of specific technologies. (Gov. Code, § 16.5(a)(5); see Cal. Code Regs., tit. 2, §§ 22000–22005.)

Even with the change to subdivision (b) to account for signatures under penalty of perjury, when an opposing party signature is needed, subdivision (d) still requires the use and retention of a printed document with ink signatures. According to the California Department of Child Support Services (DCSS), which recommended the committee address this issue, the requirement for the continued retention of paper is a challenge for local child support agencies and the California Department of Child Support Services as more courts start requiring electronic filing. Currently, local child support agencies generate thousands of stipulations in child support cases that either are physically signed at an in-person appointment or, more often, mailed out for the signing party to review, sign, and mail back to the caseworker. This can be a protracted process, particularly when the signing party resides out of state or multiple signatures are needed. DCSS recommended that the rule be amended because the ability to electronically file stipulations containing electronic signatures would drastically reduce the time it takes to obtain a filed stipulation and update the child support case based on the parties’ agreement.

The proposed amendments strike the subdivision (d) heading that reads “Documents requiring signatures of opposing parties” and instead incorporate the subdivision’s requirements under (c), which governs documents not signed under penalty of perjury. Subdivision (d) would no longer be necessary for signatures of opposing parties under penalty of perjury as those requirements would be captured in subdivision (b). The proposal adds an option for electronic signatures when the electronic signature is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data in such a manner that if the data are changed, the electronic signature may be declared invalid by the court. This option would allow for an entirely paperless process.

Finally, the proposed amendments include “other persons” within the scope of the rules. Section 1010.6 includes “other persons” in addition to parties within its scope. Accordingly, “other persons” has been added to rule 2.257 where appropriate.

## Policy implications

The Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee raised several issues. With respect to the proposed amendments to rules 2.251 and 2.255, JRS raised concerns about the courts' ability to maintain records of parties' consent to electronic service transmitted through EFSPs. The committee considered these concerns, but determined that they relate more to issues with the requirements of section 1010.6 that went into effect on January 1, 2019, than with the proposed rule amendments, which are limited. Effectively, all that the proposed amendments do is ensure that parties, other persons, and the court receive notice that someone has, as stated in section 1010.6, "manifested consent [to electronic service] through electronic means with the court or the court's electronic filing service provider." The overarching policy implication of the issues JRS raised with respect to rules 2.251 and 2.255 is that the Judicial Council may need to consider sponsoring additional amendments to section 1010.6's requirements for express consent to electronic service.

JRS also raised concerns about the amendments for electronic signatures of nonfilers under rule 2.257. JRS was concerned that courts would be expected to verify or technically validate electronic signatures on electronically filed documents that they accept for filing. This could present significant challenges for courts. The committee considered these concerns. The proposal was not intended to require the courts to validate or otherwise verify electronic signatures when they are filed. Rather, it was intended to ensure that the electronic signature was the act of the signer and not someone else, and verifiable if a dispute were to arise. Because electronic signatures are simple to create and not necessarily unique on their face, there is more of a concern about the validity of electronic signatures if the filer and the signer are different people.

The confusion may be with the proposed rule as drafted. Under the proposed rule as circulated, an electronic signature must be "unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data in such a manner that if the data are changed, the electronic signature *may be declared invalid by the court.*" The proposed language in italics injects a possible court decision about the signature, which JRS may be reading as necessitating court involvement in validating the electronic signature. It adds to a list of technical attributes of the signature something that is not an attribute of the signature itself.

The committee had originally considered stating the electronic signature must be "linked to data in such a manner that if the data are changed, the electronic signature *is invalidated.*" In the invitation to comment, the committee sought specific comments on the language "the electronic signature *may be declared invalid by the court*" versus "the electronic signature *is invalidated.*" After discussing JRS's comments and the options to address the concerns, the committee decided to return to the original language "the electronic signature is invalidated."

The benefit of the original language is that it describes an attribute of a digital signature, which is a known standard in California. Digital signatures are codified in the Government Code and the California Code of Regulations. All digital signatures must be "linked to data in such a manner that if the data are changed, the digital signature is invalidated." (Gov. Code, § 16.5(a)(4).) The



only difference between a digital signature under Government Code section 16.5(a) and an electronic signature compliant with rule 2.257 is that the rule does not require the signature to adhere to the Secretary of State's digital signature regulations, which require the use of specific technologies. (Cal. Code Regs., tit. 2, §§ 22000–22005.)

The technical attributes and technology underpinning a compliant electronic signature should not impact the court's authority to resolve disputes about an electronic signature. The committee determined that this could be addressed in a clarifying advisory committee comment stating, "The requirements for electronic signatures that are compliant with the rule do not impair the power of the courts to resolve disputes about the validity of a signature."

### **Comments**

The proposal circulated for public comment from April 11 through June 10, 2019. The following six commenters responded to the invitation to comment:

1. Superior Court of San Diego County, which agreed with the proposal;
2. Superior Court of Orange County, Juvenile Court and Family Law Divisions, which did not take a position on the proposal;
3. JRS, which disagreed with the proposal;
4. Orange County Bar Association, which agreed with the proposal;
5. DCSS, which agreed with the proposal; and
6. Executive Committee of the Family Law Section of the California Lawyers Association, which agreed with the proposed amendments to rule 2.257, but took no position on the proposed amendments to rules 2.251 and 2.255.

JRS raised the most significant issues in detailed comments, which are discussed under "Policy implications," above.

### **Alternatives considered**

The committee considered the alternative of continuing to require the retention of ink signatures on printed forms for rule 2.257(d), but determined that creating an option for an entirely paperless process would be preferable. In considering the requirements for electronic signatures by persons other than the filer, the committee considered and sought specific comments on two options that are discussed in detail in the "Policy implications" section, above.

### **Fiscal and Operational Impacts**

JRS noted the following impacts on court operations:

- Significant fiscal impact;
- Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.);
- Increases in court staff workload; and
- Impact on local or statewide justice partners.

In particular, JRS noted that it would take significant resources to enable some courts' systems to accept information transmitted from an EFSP to the court about a person's consent. In addition, JRS had concerns that the court would be required to determine the validity of electronic signatures when they are included with a filing.

The Superior Court of San Diego County commented that implementation would include notifying and training staff and updating internal procedures.

DCSS commented that it is working on establishing statewide protocols and electronic addresses for electronic service for local child support agencies (LCSAs) and noted, "The affirmative consent process will allow DCSS sufficient time to vet the protocol for e-service at LCSAs and establish a more consistent and effective approach that protects the due process of all parties involved."

Regarding electronic signatures, DCSS commented, "[T]he language meets our needs to e-file documents such as stipulations, we are in full support of the amendments." Further, DCSS stated that the amendments "will enhance the way DCSS does business with our case participants and the court."

### **Attachments and Links**

1. Cal. Rules of Court, rules 2.251, 2.255, and 2.257, at pages 8–11
2. Chart of comments, at pages 12–20.
3. Link A: Code of Civil Procedure section 1010.6,  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=1010.6](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1010.6).
4. Link B: Government Code section 16.5,  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=16.5](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=16.5).
5. Link C: California Code of Regulations, title 2, sections 22000–22005, [https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I3E9DC970D49411DEBC02831C6D6C108E&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I3E9DC970D49411DEBC02831C6D6C108E&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

Rules 2.251, 2.255, and 2.257 of the California Rules of Court are amended, effective January 1, 2020, to read:

1 **Rule 2.251. Electronic service**

2  
3 (a) \* \* \*

4  
5 (b) **Electronic service by express consent**

6  
7 (1) A party or other person indicates that the party or other person agrees to  
8 accept electronic service by:

9  
10 (A) Serving a notice on all parties and other persons that the party or other  
11 person accepts electronic service and filing the notice with the court.  
12 The notice must include the electronic service address at which the  
13 party or other person agrees to accept service; or

14  
15 (B) Manifesting affirmative consent through electronic means with the  
16 court or the court's electronic filing service provider, and concurrently  
17 providing the party's electronic service address with that consent for  
18 the purpose of receiving electronic service. A party or other person may  
19 manifest affirmative consent by serving notice of consent to all parties  
20 and other persons and either:

21  
22 ~~(C) A party or other person may manifest affirmative consent under (B) by:~~

23  
24 (i) Agreeing to the terms of service ~~agreement~~ with an electronic  
25 filing service provider, which clearly states that agreement  
26 constitutes consent to receive electronic service ~~electronically~~; or

27  
28 (ii) Filing Consent to Electronic Service and Notice of Electronic  
29 Service Address (form EFS-005-CV).

30  
31 (2) \* \* \*

32  
33 (c)-(k) \* \* \*

34  
35 **Advisory Committee Comment**

36  
37 Subdivision (b)(1)(B). The rule does not prescribe specific language for a provision of a term of  
38 service when the filer consents to electronic service, but does require that any such provision be  
39 clear. *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-  
40 CV) provides an example of language for consenting to electronic service.

1 Subdivisions (c)–(d). \* \* \*

2  
3 **Rule 2.255. Contracts with electronic filing service providers and electronic filing**  
4 **managers**

5  
6 (a)–(b) \* \* \*

7  
8 (c) **Transmission of filing to court**

9  
10 (1) An electronic filing service provider must promptly transmit any electronic  
11 filing, ~~and~~ any applicable filing fee, and any applicable acceptance of consent  
12 to receive electronic service to the court directly or through the court's  
13 electronic filing manager.

14  
15 (2) An electronic filing manager must promptly transmit an electronic filing, ~~and~~  
16 any applicable filing fee, and any applicable acceptance of consent to receive  
17 electronic service to the court.

18  
19 (d)–(f) \* \* \*

20  
21 **Rule 2.257. Requirements for signatures on documents**

22  
23 (a) **Electronic signature**

24  
25 An electronic signature is an electronic sound, symbol, or process attached to or  
26 logically associated with an electronic record and executed or adopted by a person  
27 with the intent to sign a document or record created, generated, sent,  
28 communicated, received, or stored by electronic means.

29  
30 (b) **Documents signed under penalty of perjury**

31  
32 When a document to be filed electronically provides for a signature under penalty  
33 of perjury of any person, the document is deemed to have been signed by that  
34 person if filed electronically provided that either of the following conditions is  
35 satisfied:

36  
37 (1) The declarant has signed the document using an electronic signature and  
38 declares under penalty of perjury under the laws of the state of California that  
39 the information submitted is true and correct. If the declarant is not the  
40 electronic filer, the electronic signature must be unique to the declarant,  
41 capable of verification, under the sole control of the declarant, and linked to  
42 data in such a manner that if the data are changed, the electronic signature is  
43 invalidated; or

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(2) The declarant, before filing, has physically signed a printed form of the document. By electronically filing the document, the electronic filer certifies that the original, signed document is available for inspection and copying at the request of the court or any other party. In the event this second method of submitting documents electronically under penalty of perjury is used, the following conditions apply:

- (A) At any time after the electronic version of the document is filed, any party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.
- (B) Within five days of service of the demand under (A), the party or other person on whom the demand is made must make the original signed document available for inspection and copying by all other parties.
- (C) At any time after the electronic version of the document is filed, the court may order the filing party or other person to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.
- (D) Notwithstanding (A)–(C), local child support agencies may maintain original, signed pleadings by way of an electronic copy in the statewide automated child support system and must maintain them only for the period of time stated in Government Code section 68152(a). If the local child support agency maintains an electronic copy of the original, signed pleading in the statewide automated child support system, it may destroy the paper original.

**(c) Documents not signed under penalty of perjury**

(1) If a document does not require a signature under penalty of perjury, the document is deemed signed by the party if the document is person who filed electronically.

~~**(d) Documents requiring signatures of opposing parties**~~

(2) When a document to be filed electronically, such as a stipulation, requires the signatures of opposing parties or other persons not under penalty of perjury, the following procedures ~~applies~~ apply:

1 ~~(1)(A) The party filing the document must obtain the signatures of all parties~~  
2 ~~on a printed form of the document. The opposing party or other person~~  
3 ~~has signed a printed form of the document before, or on the same day~~  
4 ~~as, the date of filing.~~

5 (2)—~~The party filing the document~~ electronic filer must maintain the  
6 original, signed document and must make it available for inspection  
7 and copying as provided in ~~(a)(b)(2)~~ of this rule and Code of Civil  
8 Procedure section 1010.6. The court and any other party may demand  
9 production of the original signed document in the manner provided in  
10 ~~(a)(b)(2)(A)–(C)~~.

11 (3)—By electronically filing the document, the electronic filer indicates that  
12 all parties have signed the document and that the filer has the signed  
13 original in his or her possession; or

14  
15 (B) The opposing party or other person has signed the document using an  
16 electronic signature and that electronic signature is unique to the person  
17 using it, capable of verification, under the sole control of the person  
18 using it, and linked to data in such a manner that if the data are  
19 changed, the electronic signature is invalidated.

20  
21 ~~(e)(d)~~ **Digital signature**

22  
23 A party or other person is not required to use a digital signature on an electronically  
24 filed document.

25  
26 ~~(f)(e)~~ **Judicial signatures**

27  
28 If a document requires a signature by a court or a judicial officer, the document  
29 may be electronically signed in any manner permitted by law.

30  
31 **Advisory Committee Comment**

32  
33 The requirements for electronic signatures that are compliant with the rule do not impair the  
34 power of the courts to resolve disputes about the validity of a signature.

**SPR19-40****Rules and Forms: Electronic Filing and Service  
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
1.	California Department of Child Support Services By Lara Chandler Racine Attorney III	A	<p>The California Department of Child Support Services (DCSS) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies (LCSAs), and our case participants. DCSS is in support of the proposals made in this invitation.</p> <p>Rule 2.251</p> <p>This rule requires the manifestation of affirmative consent to accept electronic service and specifies how notice of consent to electronic service is to be given as well as provides examples via the EFSP and EFM of language for consent. The proposal addresses the stated purpose and provides clarity to the affirmative consent process.</p> <p>The proposed changes are supported by the DCSS and our LCSAs. DCSS maintains the e-filing platform by which participating LCSAs e-file their legal documents. The local agency, however, is necessarily the party accepting service. While DCSS has not been advised that e-service is a widespread issue throughout our e-filing counties, it has been reported as problematic for those local agencies that have received some sort of e-service. DCSS has not yet established statewide protocols and electronic addresses for electronic service and so the counties getting e-served are receiving those documents inconsistently, i.e. individual staff email accounts, etc. The affirmative consent process will allow DCSS sufficient time to vet the protocol for e-service at LCSAs and establish a more consistent</p>	The committee appreciates the support and comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR19-40****Rules and Forms: Electronic Filing and Service****(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
			<p>and effective approach that protects the due process of all parties involved.</p> <p>Rule 2.257</p> <p>The Invitation to Comment proposes to amend Rule 2.257, to allow electronic signatures on e-filed documents containing signatures of opposing parties not under penalty of perjury. As this change was at the request of DCSS, and the language meets our needs to e-file documents such as stipulations, we are in full support of the amendments. The proposal addresses the stated purpose and provides language that will enhance the way DCSS does business with our case participants and the court.</p>	
2.	<p>California Lawyers Association Executive Committee of the Family Law Section By Saul Bercovitch Director of Governmental Affairs</p>	A	<p>FLEXCOM agrees with the proposed amendments to Rule of Court 2.257.</p> <p>FLEXCOM has no comment on the proposed amendments to Rules of Court 2.254 and 2.255.</p>	The committee appreciates the support.
3.	<p>Orange County Bar Association By Deirdre Kelly President P.O. Box 6130 Newport Beach, CA 92658</p>	A	The OCBA believes the proposal addresses the stated purpose.	The committee appreciates the support.
4.	<p>Superior Court of California, County of Orange Juvenile Court and Family Law Divisions By Cynthia Beltrán</p>	NI	<p><input type="checkbox"/> Rule 2.251 Electronic Service</p> <p><input type="checkbox"/> Clarification is needed to indicate if the filing portal should allow the party to proceed with an electronic filing if they do not consent to the</p>	<p>The committee appreciates the comments.</p> <p>Regarding the comment on rule 2.251, the comment is out of scope to the proposed amendments, but raise an important issue for the</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



**SPR19-40**

**Rules and Forms: Electronic Filing and Service  
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
	Administrative Analyst Family Law and Juvenile Court		<p>terms requiring them to submit to “affirmative consent” for all documents.</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Rule 2.257 Requirement for signatures on documents</li> <li><input type="checkbox"/> If the electronic signature is declared invalid, will the court be expected to set a hearing on their own motion for the parties to appear or proceed in another manner?</li> </ul> <p><b>Request for Specific Comments.</b></p> <ul style="list-style-type: none"> <li>▪ <i>What would the implementation requirements be for courts?</i></li> </ul> <p>Judges and staff would be informed of the changes. Updates to procedures and the case management system may be needed. Discussions will be needed with the case management system vendor, Tyler, to identify system and process changes needed for compliance.</p>	<p>committee’s consideration. The committee will consider addressing the issue in a future rule proposal.</p> <p>Regarding the comment on rule 2.257, how to proceed would be up to the court.</p>
5.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer Central Courthouse 1100 Union Street San Diego, California 92101	A	<p>Q: Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p> <p>Q: The committee considered including a requirement that the electronic signature be “linked to data in such a manner that if the data are changed, the electronic signature is invalidated.” However, the committee was concerned that this would remove authority that would appropriately belong to the court and decided on changing “the electronic</p>	<p>The committee appreciates the support and the comments.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR19-40**

**Rules and Forms: Electronic Filing and Service  
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committee Responses
			<p>signature is invalidated” to “the electronic signature may be declared invalid by the court.” Is the proposed language preferable? Is the particular requirement necessary?</p> <p>The proposed language is preferable, as it leaves authority with the judicial officer.</p> <p>Q: What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.</p> <p>Notifying/training staff and updating internal procedures.</p>	
6.	TCPJAC/CEAC Joint Rules Subcommittee (JRS) on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	N	<p>Do not agree with proposed changes.</p> <p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Significant fiscal impact</li> <li>• Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.)</li> <li>• Increases court staff workload</li> <li>• Impact on local or statewide justice partners.</li> </ul> <p>Some case management systems currently have no mechanism for EFSPs to submit consent by a party for tracking purposes. Systems would need to be re-</p>	<p>The committee appreciates the comments and concerns raised</p> <p>Regarding the issues raised about consent to electronic service, as long as there has been electronic service, consent has been required. By statute, where electronic service is permitted, but not required, the court can only electronically serve documents issued by the court if the person being served has consented. (Code Civ. Proc, § 1010.6(a)(2)(A)(ii), (a)(3).) Unless electronic service is mandatory, the clerk should only be electronically serving the parties that have consented to it. The proposed rule amendments do not change this process.</p>

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**SPR19-40**

**Rules and Forms: Electronic Filing and Service  
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committee Responses
			<p>designed to support this process and allow court staff to easily identify who consented. This will likely be a complicated change that involves the EFSP systems as well as the core CMS and will be a cost impact to the court.</p> <p>On the signature side of the proposal, if the court is required to validate signatures, besides the cost and challenges of implementing a technical solution to validate signature authentication and data integrity, we have concerns about the public understanding how to implement the digital protections that ensures no data is changed. Just doing research on the issue, we had to have an expert in the field of digital discovery explain to us step by step how this process would work. This rule change adds technical validation requirements for compliance that courts are not prepared to handle and puts courts in the position of rejecting documents for non-compliance for an issue that has other avenues of resolution. If a document’s signature authenticity is challenged, the parties should be required to address these challenges through a motion process.</p> <p>Furthermore, the JRS believes that courts should not serve as the custodian of eService consent. If there is a dispute between the parties as to the consent to eservice between them, they can bring that dispute before the courts and submit their evidence of notice at that time without having the courts go through an onerous administrative process of receiving, storing and tracking electronic service consents between the parties that is rarely challenged.</p>	<p>Regarding the comment on rule 2.251 that clarification is needed to indicate if a filing portal should allow a party to proceed if they do not consent. This is out of scope to the proposed amendment, but an important consideration to rule 2.251 in general. The rule does not address this issue and the committee will consider it for a future rule amendment.</p> <p>JRS raised specific questions with respect to rule 2.255 asking whether (1) the transmission should be on a council form document filed into each individual case or data transmitted back to the case management system for each individual case, and (2) attorneys are able to file consent at the attorney level or party level (for those with multiple cases) or will it be on a case by case basis. Consent would be applicable to each individual case. It could be recorded on a Judicial Council form or in data transmitted from the EFSP. Attorneys cannot file consent at the attorney level or party level. Code of Civil Procedure section 1010.6 requires consent to be in the “specific action.” (Code Civ. Proc., § 1010.6(a)(2)(A)(2).)</p> <p>JRS raised a number of concerns about the electronic signature amendments. : The proposal was not intended to require the court to validate or otherwise verify signatures when they are filed. Rather, it was intended to ensure that ensure the electronic signature was the act of the signer and</p>

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**SPR19-40**

**Rules and Forms: Electronic Filing and Service  
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committee Responses
			<p>For courts that use eService, the requirement to track consent for each party on a case will increase workload. The clerk will need to review filings for each party to ensure a consent form is on file and only select eService for those parties, while mailing service to others. In cases with multiple parties, this will be cumbersome and time consuming for courts that routinely eService.</p> <p>Suggested modifications: It is important to note, that there is an option in the code, CCP 1010.6(d), to allow courts the option of implementing mandatory eService via local rule for Civil. As eService is critical for our day to day operations to serve court orders, our court has already received approval to implement such a local rule for Civil. The ability to have mandatory eService by local rule is NOT being impacted by this proposal. However, because the local rule option is not applicable to other case types such as Probate, the comments below are submitted for consideration, as the proposed process will impact staff workload.</p> <p>REQUESTED CLARIFICATION: 1) For Rule 2.251 §(b)(1)(B)—verbiage was added “a party or other person may manifest affirmative consent by serving notice of consent to all parties and other persons and either:...” Clarification is requested as to whether the EFSP, EFM, individual parties or their attorney(s) are required to provide electronic service.</p>	<p>not someone else, and verifiable if a dispute were to arise. Because electronic signatures are simple to create and not necessarily unique on their face, there is more of a concern about the validity of electronic signatures if the filer and the signer are different people. The committee considered several options, including those suggested by JRS. Ultimately, the committee decided to return to the alternative language that it had considered stating the electronic signature must be “linked to data in such a manner that if the data are changed, the electronic signature is invalidated.” The benefit of this language is that it is an attribute of a digital signature, which is a known standard in California. Digital signatures are codified in the Government Code and the Code of Regulations. All digital signatures must have the attribute of being “linked to data in such a manner that if the data are changed, the digital signature is invalidated.” (Gov. Code, § 16.5(a)(4).) The only difference between a digital signature under Government Code section 16.5(a) and an electronic signature that would be compliant rule 2.257 would be that the rule wording does not require the signature to adhere to the Secretary of State’s digital signature regulations, which require the use of specific technologies. (Cal. Code Regs., tit. 2, §§ 22000-22005.)</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR19-40**

**Rules and Forms: Electronic Filing and Service  
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committee Responses
			<p>2) For Rule 2.255 § (a)(c)(2)—clarification is requested. Is the intent of the transmittal to be a filed judicial council form document filed into each individual case or data transmitted back to the case management system for each individual case? Additionally, would attorneys be able to file consent at the attorney level or party level (for those with multiple cases) or will it be on a case by case basis?</p> <p>3) For rule 2.251, clarification is needed to indicate if the filing portal should allow the party to proceed with an electronic filing if they do not consent to the terms requiring them to submit to “affirmative consent” for all documents.</p> <p>4) For rule 2.257(b)(1): Will clarification be provided on who will be expected to verify the electronic signature, if needed? The court does not currently verify signatures of documents it has received. Any ambiguity in the rule that could place a burden on the court to verify signatures should be clarified to indicate that it is not the court’s responsibility to verify signatures on documents it accepts for filing. Any rule that requires the court to verify signatures will have a tremendous fiscal impact on the court. The rule should be modified to require the parties to maintain the metadata for the electronic signature and the court is not responsible for this process.</p> <p>5) The requirements for signatures poses significant challenges because our case management system “flattens” documents when they are filed, so if I am correct, the court would likely be unable to determine whether an electronic signature is valid. The proposed amendment to Rule 2.257(b)(1) for</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR19-40**

**Rules and Forms: Electronic Filing and Service  
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
			<p>documents signed under penalty of perjury reads in part: “If the declarant is not the electronic filer, the electronic signature must be unique to the declarant, capable of verification, under sole control of the declarant, and linked to data in such a manner that if the data are changed, the electronic signature may be declared invalid by the court.” A court cannot verify a signature that simply reads “-s- “and the data behind it showing who signed it, when, and where, is not stored by the filing system. Also, if any electronically filed document is unsigned that is required to be signed under penalty of perjury, would the court simply assume that there is a wet-signed copy of the document under Rule 2.257(b)(2)? Please see comments in above-paragraph relating to court’s inability to verify signatures.</p> <p>6) The California’s Uniform Electronic Signatures Act contains less stringent requirements for signatures under penalty of perjury than the proposed new rule and should be considered in modifying the signature requirements:</p> <p>Civil Code section 1633.11 subdivision (b) reads: In a transaction, if a law requires that a statement be signed under penalty of perjury, the addition to the electronic signature, all of the information as to which the declaration pertains together with a declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct.</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR19-40**

**Rules and Forms: Electronic Filing and Service  
(Amend Cal. Rules of Court, rules 2.251, 2.255, and 2.257)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
			Civil Code section 1633.2 subdivision (h) defines an “electronic signature” to mean “an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. For purposes of this title, a “digital signature” as defined in subdivision (d) of Section 16.5 of the Government Code is a type of electronic signature.”	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

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Title

Rules and Forms: Remote Access to  
Electronic Records by Government Entities

Rules, Forms, Standards, or Statutes Affected  
Amend Cal. Rules of Court, rule 2.540

Recommended by

Information Technology Advisory

Committee

Hon. Sheila F. Hanson, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2020

Date of Report

July 18, 2019

Contact

Andrea L. Jaramillo, 916-263-0991

[andrea.jaramillo@jud.ca.gov](mailto:andrea.jaramillo@jud.ca.gov)

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### Executive Summary

The Information Technology Advisory Committee recommends the Judicial Council amend rule 2.540 of the California Rules of Court to add “county public administrator” and “county public conservator” to the list of government entities that may be granted remote access to certain court electronic records, and make a minor amendment to the good cause provision of the rule. These amendments will make the rule more comprehensive and remove a need to make a good cause finding for those entities.

### Recommendation

The Information Technology Advisory Committee recommends the Judicial Council, effective January 1, 2020, amend rule 2.540(b)(1) to:

1. Add “county public administrator” to the list of government entities in the rule, and allow remote access to probate electronic records by county public administrators.
2. Add “county public conservator” to the list of government entities in the rule, and allow remote access to criminal, mental health, and probate electronic records by county public conservators.



3. Change “statutory duties” to “legal duties” in the standard for good cause.

The text of the amended rule is attached at page 4.

### **Relevant Previous Council Action**

Rule 2.540 is one of several new rules addressing remote access to electronic records by government entities that the Judicial Council adopted effective January 1, 2019. Rule 2.540 identifies which government entities may have remote access to which types of electronic records. The rule includes a good cause provision under which a court may grant remote access to electronic court records to additional government entities and case types beyond those specifically identified in the rule.

### **Analysis/Rationale**

During the public comment period last year, a commenter recommended that rule 2.540 include county public administrators and county public conservators. When drafted, rule 2.540 was meant to include state and local government entities with regular business before the courts. The Information Technology Advisory Committee determined that county public administrators and county public conservators fell within this scope and the rule should be amended to include them. Under the amendments, courts could permit (1) a county public administrator to have remote access to probate electronic records and (2) a county public conservator to have remote access to electronic criminal, mental health, and probate electronic records. Remote access for a county public administrator is tailored to electronic records relevant to administering decedents’ estates. Remote access for a county public conservator is tailored to electronic records relevant to serving as conservator of an estate or person.

In addition to the listed state and local government entities, rule 2.540 includes a good cause provision under which a court may grant remote access to electronic court records to government entities and case types beyond those specifically identified in the rule. The standard for good cause is “the government entity requires access to the electronic records in order to adequately perform its statutory duties or fulfill its responsibilities in litigation.” (Cal. Rules of Court, rule 2.540(b)(1)(O).) The committee received a recommendation to change “statutory duties” to “legal duties” to be more comprehensive, as legal obligations may stem from more than statute.

### **Policy implications**

The proposed amendments are noncontroversial. No commenters raised policy issues with the proposal.

### **Comments**

Four commenters responded to the invitation to comment: the Superior Court of San Diego County, the Superior Court of Orange County, the Juvenile Court and Family Law Divisions of the Superior Court of Orange County, and the Orange County Bar Association (OCBA). Three commenters agreed that the proposal appropriately addressed its stated purpose. The San Diego County court and OCBA both agreed with the proposal while the Orange County court did not

take a position, though court's Juvenile Court and Family Law Divisions commented that they would be in agreement when the court is able to offer remote access.

### **Alternatives considered**

The alternative would be to maintain the status quo, but the amendments would be preferable because they would make the rule more comprehensive.

### **Fiscal and Operational Impacts**

Adding county public administrators and county public conservators to the list of government entities the court may allow to remotely access electronic records will remove a need to make a good cause finding for those entities. The proposed amendments are not expected to result in any costs.

### **Attachments and Links**

1. Cal. Rules of Court, rule 2.540, at page 4
2. Chart of comments, at page 5

DRAFT

Rule 2.540 of the California Rules of Court is amended, effective January 1, 2020, to read:

1 **Rule 2.540. Application and scope**

2  
3 **(a) Applicability to government entities**

4  
5 The rules in this article provide for remote access to electronic records by  
6 government entities described in (b). The access allowed under these rules is in  
7 addition to any access these entities or authorized persons working for such entities  
8 may have under the rules in articles 2 and 3.  
9

10 **(b) Level of remote access**

11  
12 (1) A court may provide authorized persons from government entities with  
13 remote access to electronic records as follows:

14  
15 (A)–(M) \* \* \*

16  
17 (N) County public conservator: criminal electronic records, mental health  
18 electronic records, and probate electronic records.

19  
20 (O) County public administrator: probate electronic records.

21  
22 ~~(N)~~(P) Federally recognized Indian tribe (including any reservation,  
23 department, subdivision, or court of the tribe) with concurrent  
24 jurisdiction: child welfare electronic records, family electronic records,  
25 juvenile justice electronic records, and probate electronic records.

26  
27 ~~(O)~~(Q) For good cause, a court may grant remote access to electronic  
28 records in particular case types to government entities beyond those  
29 listed in (b)(1)(A)–~~(P)~~~~(N)~~. For purposes of this rule, “good cause”  
30 means that the government entity requires access to the electronic  
31 records in order to adequately perform its statutory legal duties or fulfill  
32 its responsibilities in litigation.

33  
34 ~~(P)~~(R) All other remote access for government entities is governed by  
35 articles 2 and 3.

36  
37 (2)–(3) \* \* \*

38  
39 **(c) \* \* \***

**SPR19-41****Rules and Forms: Remote Access to Electronic Records by Government Entities  
(Amend Cal. Rules of Court, rule 2.540)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Responses</b>
1.	Orange County Bar Association By Deirdre Kelly President P.O. Box 6130 Newport Beach, CA 92658	A	Does the proposal appropriately address the stated purpose? By adding remote electronic access to the public administrator for court probate records and to the public conservator (aka public guardian) for remote access to court probate, criminal, and mental health records, the proposal fulfills its stated purpose.	The committee appreciates the support.
2.	Superior Court of California, County of Orange By Denise Parker Program Coordinator/Specialist IMPACT Team – Criminal/Traffic Operations West Justice Center, Orange County Superior Court	NI	Request for Specific Comments: No significant change, adds the two entities listed in the summary to the list of entities that can access court records electronically. The court is still exploring alternatives to comply with the rule of court changes that were effective January 2019 governing access for justice partners.  The proposal does appropriately address the stated purpose.	The committee appreciates the comments.
3.	Superior Court of California, County of Orange Juvenile Court and Family Law Divisions By Cynthia Beltrán Administrative Analyst Family Law and Juvenile Court	A	Currently, Orange County does not offer remote access to electronic records on Family Law or Juvenile case files. However, if/when we do, we would be in agreement with the changes. It would require major enhancements to our case management system.	The committee appreciates the comments.
4.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer Central Courthouse 1100 Union Street San Diego, California 92101	A	Q: Does the proposal appropriately address the stated purpose? Yes.  No additional comments.	The committee appreciates the support.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

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**Title**

Appellate Procedure: Service Copy of  
Petition for Review

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rule 8.500

**Recommended by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair  
Information Technology Advisory  
Committee  
Hon. Sheila F. Hanson, Chair

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2020

**Date of Report**

July 29, 2019

**Contact**

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## Executive Summary

The Information Technology Advisory Committee and Appellate Advisory Committee recommend amending the rule regarding petitions for review in the California Supreme Court to remove the requirement to send to the Court of Appeal a service copy of a petition for review when a petition is filed electronically. Under current practice, when a petition for review is accepted for electronic filing by the Supreme Court, the Court of Appeal automatically receives a filed/endorsed copy of the petition through the electronic filing service provider (EFSP). Thus, in actual practice, the electronic filing of a petition satisfies the requirement to serve the Court of Appeal with a copy, and there is no need for an electronic filer to serve the Court of Appeal with another copy as required by the rules. The proposed amendment does not change the requirement to serve a copy of the petition on the superior court clerk in all instances, and, if a petitioner files in paper format, to also serve a copy of the petition on the Court of Appeal.

## **Recommendation**

The Information Technology Advisory Committee and Appellate Advisory Committee recommend that the Judicial Council, effective January 1, 2020, amend California Rules of Court, rule 8.500(f)(1) to require a petitioner to serve a copy of a petition for review on the clerk/executive officer of the Court of Appeal only when the petition is filed in paper format, and to clarify that a service copy to the Court of Appeal is not required when a petition is filed electronically.

The text of the amended rule is attached at page 4.

## **Relevant Previous Council Action**

Although the Judicial Council has acted previously on this rule, this proposal recommends only minor revisions that streamline the service requirements adopted through prior action. The Judicial Council adopted the predecessor to rule 8.500(f) effective January 1, 2004. Effective January 1, 2007, the Judicial Council amended the rule to require that a petition for review also be served on the clerk of the superior court and the Court of Appeal. Effective January 1, 2018, the Judicial Council amended the rule again to require service of the petition for review on the clerk for the superior court and the clerk/executive officer of the Court of Appeal.

## **Analysis/Rationale**

Recognizing that the Courts of Appeal are automatically receiving copies of petitions for review when they are filed electronically, this proposal would clarify that electronic filing constitutes service of a petition on the clerk/executive officer of the Court of Appeal, and that electronic filers do not need to serve a duplicate copy of an electronically filed petition on the clerk/executive officer of the Court of Appeal. When a petition for review is filed in paper format, however, the filer must still serve the petition on the superior court clerk and the clerk/executive officer of the Court of Appeal. The current EFSP automatically sends a copy of the petition for review to the clerk/executive officer of the Court of Appeal when it is filed electronically. But the current rule nevertheless requires an electronic filer to serve a copy of the petition on the clerk/executive officer of the Court of Appeal. This service requirement causes additional effort and expense for the electronic filer and additional workload for the Courts of Appeal.

## **Policy implications**

This proposal is intended to eliminate unnecessary cost and effort for counsel and self-represented litigants in preparing and serving copies of e-filed petitions, and to eliminate duplicative processing efforts for appellate court staff relating to petitions that, in effect, already have been served on the Court of Appeal.

## **Comments**

This proposal was circulated for public comment as part of the regular spring comment cycle from April 11 to June 10, 2019. One bar association and one superior court submitted comments, both agreeing with the proposal, without modifications.

A chart with the full text of the comments received and the committees' responses is attached at pages 5–6.

### **Alternatives considered**

The committees considered maintaining the current requirement that petitioners serve on the Court of Appeal duplicate copies of petitions filed electronically. The committees concluded that the proposed changes were appropriate because they eliminate unnecessary and duplicative effort and expense.

### **Fiscal and Operational Impacts**

The committees anticipate that appellate courts will likely incur some cost to train staff on the new procedures, but do not anticipate any appreciable implementation costs. The superior court commenter states that minimal training in the revised procedures would be needed. The committees expect that the amended rule should save court resources by eliminating duplicate paper filings for electronically filed petitions.

### **Attachments and Links**

1. Cal. Rules of Court, rule 8.500, at page 4
2. Chart of comments, at pages 5–6

DRAFT

Rule 8.500 of the California Rules of Court is amended, effective January 1, 2020, to read:

1 **Rule 8.500. Petition for review**

2

3 **(a)–(e) \* \* \***

4

5 **(f) Additional requirements**

6

7 (1) The petition must also be served on the superior court clerk and, if filed in  
8 paper format, the clerk/executive officer of the Court of Appeal. Electronic  
9 filing of a petition constitutes service of the petition on the clerk/executive  
10 officer of the Court of Appeal.

11

12 **(2)–(3) \* \* \***

13

14 **(g) \* \* \***

15



**SPR19-08**

**Appellate Procedure: Service Copy of a Petition for Review  
(Amend Cal. Rules of Court, rule 8.500)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>DRAFT Committees Responses</b>
1.	Orange County Bar Association by Deirdre Kelly, President	A	No specific comment.	The committees note the commenter’s support for the proposal.
2.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	<ul style="list-style-type: none"> <li>•Does the proposal appropriately address the stated purpose? <b>Yes.</b></li>   <li>The committees also seek comments from courts on the following cost and implementation matters:</li>   <li>•Would the proposal provide cost savings? If so, please quantify. <b>Yes. It would save the costs of printing copies for the parties.</b></li>   <li>•What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? <b>Implementation requirements for court would be: Training for staff at the COC I, II, III &amp; Lead positions. The expected number of hours are unknown; however, it should be minimal training for staff that are already familiar with working the counter in Appeals. Procedures would need to be revised to indicate the change.</b></li>   <li>•Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <b>Yes.</b></li> </ul>	The committees note the commenter’s support for the proposal, and appreciate the commenter’s input on these questions.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR19-08**

**Appellate Procedure: Service Copy of a Petition for Review  
(Amend Cal. Rules of Court, rule 8.500)**

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	DRAFT Committees Responses
			•How well would this proposal work in courts of different sizes? <i>Fine.</i>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 23–24, 2019

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**Title**

Appellate Procedure: Uniform Formatting  
Rules for Electronic Documents

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rules 8.40, 8.44,  
8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and  
8.252

**Recommended by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair  
Information Technology Advisory  
Committee  
Hon. Sheila F. Hanson, Chair

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2020

**Date of Report**

August 6, 2019

**Contact**

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### Executive Summary

The Appellate Advisory Committee and the Information Technology Advisory Committee propose revising several rules of the California Rules of Court to make uniform the formatting guidelines for electronic documents filed in appellate courts. The rules currently lack various requirements established by local rule. Moreover, most local rules differ in their requirements and scope. By establishing uniform rules for all appellate courts, this proposal will ease the burden on filers caused by differing formatting rules. The proposal originated from a suggestion by a member of the Joint Appellate Technology Subcommittee of the Appellate Advisory Committee and the Information Technology Advisory Committee.

### Recommendation

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend that the Judicial Council, effective January 1, 2020, amend California Rules of Court:

1. Rule 8.40, to limit its scope to cover requirements for documents filed in paper form;
2. Rule 8.44(c), to:
  - Allow a court to require by local rule the submission of an electronic copy of a paper filing; and
  - Delete references to local court requirements for electronically filed documents, because e-filing is now mandatory and the format of electronic documents is addressed in rule 8.74;
3. Rule 8.46, to update a cross-reference to rule 8.40 (paper format) and to add a cross-reference to rule 8.74 (electronic format);
4. Rule 8.71, to impose mandatory electronic filing with some limited exceptions, including those established by the *Supreme Court Rules Regarding Electronic Filing*;
5. Rule 8.72, to set out the e-filing responsibilities of courts and electronic filers, and to add an advisory committee comment regarding an electronic filer's responsibilities not to harm the court's electronic filing system or other users of that system;
6. Rule 8.74, to establish uniform formatting rules for electronic documents filed with the appellate courts, and to implement formatting requirements drawn from some best practices developed among the various appellate courts through their local rules and from courts' experience reviewing electronic documents. The amendments to rule 8.74 prioritize uniformity, readability, and user-friendly formatting requirements, as follows:
  - Subdivision (a) addresses format and formatting requirements for all electronic documents;
  - Subdivision (b) sets out additional formatting requirements for documents prepared for electronic filing in the reviewing court, such as font, line spacing, margins, page alignment, and hyperlinks;
  - Subdivision (c) specifies formatting requirements for certain documents, including briefs, requests for judicial notice, appendixes, agreed statements and settled statements, reporters' transcripts and clerks' transcripts, exhibits, and sealed and confidential records;
  - Subdivision (d) provides that this rule prevails over other formatting provisions;
7. Rules 8.77 and 8.78, to make technical changes to existing cross-references;
8. Rule 8.204(b), to provide formatting requirements for briefs filed in paper form; and
9. Rule 8.252, to establish the procedure for seeking judicial notice of a matter, and to reflect the presumption of electronic filing unless an exemption applies.

The text of the amended rules is attached at pages 13–23.

## **Relevant Previous Council Action**

Over the past three decades, the Judicial Council has regularly acted to facilitate the integration of technology in the work of the courts. For instance, the Judicial Council sponsored legislation in 1999 authorizing electronic filing and service in the trial courts. (Sen. Bill 367; Stats. 1999, ch. 514.) It first adopted implementing rules for the trial courts, effective January 1, 2003. The council expanded those rules in 2013 to address mandatory electronic filing and service in response to the enactment of Assembly Bill 2073 (Stats 2012; ch. 320). In addition, the Judicial Council has adopted rules extending electronic filing and service to the appellate courts, first in 2010 as a pilot project in the Court of Appeal, Second Appellate District, and then in 2012 to all appellate courts. Effective January 1, 2016, the Judicial Council adopted an initial round of technical rule amendments to address language in the rules that was incompatible with statutes and rules governing electronic filing and service and with e-business practices in general.

## **Analysis/Rationale**

Although electronic filing is now common practice in California's appellate courts, the standards and requirements in the courts vary widely, consisting of a patchwork of differing local rules and formatting guidelines. The intent of these proposed amendments is to foster uniformity among the courts. The committees looked for best practices already in place in the appellate courts and proposed changes based upon the courts' experiences to date with electronic filings. The amendments are intended to improve legibility, readability, and functionality of electronic filings on monitors, screens, and ebook readers used by the bench, bar, and public. Finally, the amendments to rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252 aim to achieve internal consistency—to the extent practicable—between existing rules for paper filings and electronic filings.

## **Policy implications**

Because the appellate courts implemented electronic filing at different times, the rules governing electronically filed documents differ greatly between the districts. For the benefit of the courts, practitioners, and litigants, this proposal institutes mandatory electronic filing, and establishes consistent statewide formatting requirements for the appellate courts.

## **Comments**

In total, 18 individuals, organizations, court staff, and trial and appellate courts submitted comments on this proposal. Four commenters indicated that they agreed with the proposal, 2 indicated that they agreed with the proposal if modified, and 12 did not indicate a position on the proposal but suggested changes or asked for additional clarity or consistency with other rules. (Four of the 12 indicated that they were against one specific provision: the proposed ban on Times New Roman font.) Several comments were extensive and included responses to the questions asked by the committees and suggestions for modifying the proposal. Broadly speaking, the comments addressed three areas: (1) rule language, scope, and clarity; (2) technology; and (3) page layout and content.

A chart of the comments received and the committees' responses is attached at pages 24–59.

***Rule language, scope, and clarity***

*Rule 8.40's exceptions and cross-references to other rules.* Two commenters asked for clarity on rule 8.40(a), which as circulated for public comment addressed the form of filed documents. One commenter noted that the provision suggests the existence of exceptions to mandatory electronic filing but that the rule does not reference any specific exceptions. Another commenter indicated that subdivision (a) requires compliance with “the relevant format provisions” of this rule and other rules, but that it is not entirely clear which other format provisions are relevant to electronic filing.

Because the proposal used already existing rules to implement uniform formatting, subdivision (a) was duplicative of several other rules. Under the circumstances, the committees recommend that rule 8.40 be amended to reflect only cover requirements for paper documents, thereby eliminating potentially confusing cross-references to the rules concerning mandatory electronic filing, exceptions, and format provisions for paper documents. The committees also recommend amending rules 8.74 and 8.204 to make the few remaining cross-references easier to discern.

*Rule 8.74's scope and complexity.* Several commenters observed that, as circulated for public comment, rule 8.74(a) (Format of electronic documents) applied to all electronic documents, and as a result it imposed formatting requirements on documents not prepared for filing in the first instance in a reviewing court. The commenters noted that such documents—including appendixes, transcripts, trial exhibits, and other documents—likely will already have margins, text, and line spacing that cannot, or should not, be reformatted to comply with rule 8.74. The commenters suggested modifying the proposal to make clear that only certain parts of rule 8.74(a) apply to all documents filed in electronic form. The e-filing working group staff of the Supreme Court commented that the text-searchable portable document format (PDF) provision set out in rule 8.74(a)(1) required e-filers to convert rather than scan documents to ensure text searchability, but staff noted that certain documents, including handwritten documents, forms, and diagrams, may not be amenable to being “converted” by a means other than scanning, or if they can be converted to PDF without scanning a paper document, the PDFs may nevertheless not be text searchable.

Based on these comments, the committees propose expanding the proposal’s exception in subdivision (a)(1) for documents that an electronic filer possesses only in paper form to include documents that cannot practicably be converted to a text-searchable file, for example, if the document is entirely or substantially handwritten, a photograph, or a graphic that is not primarily text-based. To clarify this allowance, the committees recommend adopting an advisory committee comment explaining subdivision (a)(1)’s exceptions. (See the comment to amended rule 8.74(a)(1), at page 21.)

The committees also recommend adding a new subdivision (b), “Additional formatting requirements applicable to documents prepared for electronic filing in the first instance in a reviewing court.” As its title indicates, new subdivision (b) outlines additional formatting requirements for documents prepared for electronic filing in the reviewing court, whereas subdivision (a) sets out the essential formatting requirements applicable to all electronic

documents. As modified after public comment, the rule treats documents prepared for filing in the reviewing court differently from documents created before the appeal, but it establishes several baseline formatting requirements applicable to all electronic documents. The committees recommend including an advisory committee comment explaining subdivision (b)'s scope. (See the comment to amended rule 8.74(b), at page 21.)

In response to public comments asking for additional clarity, the committees further propose adding to rule 8.74(b) each of the relevant formatting provisions in rules 8.40(c) and 8.204(b). The proposal circulated for public comment relied on cross-references for these requirements, which commenters found confusing. By adding each of the relevant formatting provisions to rule 8.74, and expressly limiting the application of rules 8.40 and 8.204(b) to briefs and petitions filed in paper form, the rules will more clearly state those formatting requirements applicable to electronic filings and those applicable to paper filings.

*Sealed materials, manual filings, and paper copies.* The e-filing working group staff of the Supreme Court identified a potential need for clarification in the provision concerning sealed and confidential records. Specifically, the staff offered more consistent terminology and suggested expanding the provision to address both the filing of pages that have redactions and the filing of documents with multiple pages omitted. One bar association commenter suggested that more detailed instructions with respect to manual filings, electronic filing of sealed materials, and delivery of paper copies of electronic filings would be helpful.

The committees recommend implementing the suggestions from Supreme Court staff with minor changes. With respect to the bar association's request for more guidance on these issues, the committees will retain these comments for future consideration. If courts' and e-filers' experiences with electronic filing warrant action, the committee could address these provisions in the future. In some instances, the committees expect courts will continue to publish formatting tips and guidelines supplementing the uniform rules, and these publications may address the commenter's concerns.

*Technical amendments.* Four rules—one addressed in the invitation to comment (rule 8.204) and three others (rules 8.46, 8.77, and 8.78)—require technical amendments because of existing cross-references. The proposed changes to rule 8.40 would make existing cross-references in rules 8.46 and 8.204 concerning cover requirements inaccurate. The committees recommend minor changes to update those existing cross-references, including adding a cross-reference to rule 8.74(a) for documents filed in electronic form. Technical amendments to rules 8.77(a)(3) and 8.78(a)(2)(B) are necessary because of moving the electronic-filer-responsibilities provision into rule 8.72(b)(2) from rule 8.74(a)(4).

*Suggested changes to rules outside the proposal.* Two commenters noted that other rules related to electronic filing were not part of the proposal. One commenter suggested updating all existing provisions relating to electronic filing, including requirements for signatures (rules 8.42 and 8.75), general provisions for sealed and confidential records (rule 8.45), electronic service (rule 8.78), court order for electronic service (rule 8.79), form of the record (rule 8.144), and new

authorities (rule 8.254). The comment from the e-filing working group staff of the Supreme Court noted that the proposal does not amend rule 8.78(a)(2)(B)'s provision concerning consent to electronic service. The equivalent rule for the trial court, rule 2.251(b)(1)(B), was recently amended to be in compliance with newly enacted section 1010.6 of the Code of Civil Procedure, which, at least in the trial courts, no longer permits use of the act of electronic filing to serve as consent. The committees recommend addressing this issue in part by adding rule 8.74(a)(9)(A), which would provide that "inclusion of a fax number or email address on any electronic document does not constitute consent to service by fax or email unless otherwise provided by law."

Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for amendment by the Judicial Council, the committees will retain the commenters' suggestions concerning other rules in title 8 for future consideration. At this time, the committees recommend only the technical amendment to update the existing cross-reference in rule 8.78. The committees will consider possible changes to rule 8.78's consent and electronic service provisions during the winter rule cycle.<sup>1</sup> As to rules 8.42, 8.45, 8.75, 8.79, 8.144, and 8.254, the committee will consider additional changes if experience with electronic filing warrants amendments to these other rules.

### ***Technology***

*File-size restrictions.* Several commenters who expressed support for the proposal questioned rule 8.74's 25-megabytes file-size restriction. These commenters also asked whether the 300-page limit for certain appendixes was necessary if it is possible for e-filers to prepare those volumes within the 25-megabytes file-size restriction, and questioned the wisdom of requiring manual filing for filings containing over five volumes when only one court has such a volume limitation in place.

The committees considered deferring action on the file-size restriction and leaving the limits to the courts. However, the committees recommend ultimately retaining the proposal's 25-megabytes file-size restriction. The principal reason not to defer action on the file-size restriction is that the 25-megabytes limit is already uniform across the state by local rule. Concerns were raised about establishing a rule with a file-size limit when capacity may change. Although there are some drawbacks to codifying technological parameters such as file size when technological changes could outpace the Judicial Council's rules cycles, ultimately, the motivating purpose of this proposal is uniformity. That goal would be lost if each court were permitted to set unique file-size limits on e-filers. Although commenters suggested that an increased file size might be possible, none indicated that the existing 25-megabytes restriction was unworkable or regularly compromised their electronic filings.

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<sup>1</sup> California Rules of Court, rule 8.78(a)(2)(B) still provides: "The act of electronic filing shall be deemed to show that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule [8.72(b)(2)], unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and chooses instead to be served paper copies at an address specified in the notice."



In response to the comments, the committees made two minor changes to the proposal concerning multiple-volume filings and manual filings. First, the committees modified rule 8.74(a)(5) to permit electronic filings that exceed the 300-page limit applicable to certain types of documents (e.g., rule 8.124(d)(1) (appendixes), rule 8.144(b)(6) (clerks' and reporters' transcripts), and rule 8.144(g) (agreed or settled statements)). Because an electronic filing may contain multiple documents or volumes, the proposal would allow electronic filings comprising multiple volumes—each 300 pages or fewer—as long as each component complies with those rules' page limitations and the electronic filing does not exceed 25 megabytes. The proposed rule, as modified following public comment, acknowledges the 300-page limit for certain documents and provides that the individual components of an electronic filing must comply with the page limit of those other rules. Second, as the commenters note, only one court requires manual filing when an electronic filer seeks to file an electronic document consisting of more than 5 files. The committees recommend increasing the manual-filing restriction to 10 files because filings consisting of more than 5 files are common in complex cases. Under existing limits in the Appellate Court Case Management System (ACCMS), a 10-volume limit would not exceed the file-size restrictions currently in place, and the increase from 5 to 10 will relieve electronic filers from the burden of manual filing in more cases.

*Color component prohibition.* Two commenters who agreed with the proposal if modified asked whether rule 8.74's prohibition on color components was necessary in light of existing technology, and advocated for color components to be permitted if possible. These commenters emphasized that color components can be persuasive in appellate advocacy. One commenter noted that only one appellate district prohibits filings with color components. The invitation to comment erroneously indicated that color components were not supported in ACCMS. The committees have since confirmed that color components on their own do not present a problem for ACCMS. Instead, color components necessarily increase file size, and increased file size affects loading time. With this new information, the committees recommend permitting electronic documents with color components as long as they do not exceed the file-size limit of 25 megabytes, as provided by amended rule 8.74(a)(8). Although the color cover provisions of rule 8.40, as modified, apply only to paper filings, the committees recommend expressly prohibiting color covers for electronic documents to avoid unnecessarily large file sizes where color covers are not required.

Based on the public comments and the allowance for electronic filings with color components, the committees modified the proposal to delete the references to PowerPoint and "documents containing photographs or any color component" in rules 8.74(a)'s manual filing provision. The provision would still specify a format for manually filed photographs, because color photographs may require manual filing on electronic media if the file exceeds 25 megabytes. At the Joint Appellate Technology Subcommittee meeting on July 1, 2019, subcommittee members expressed concerns about original electronic files when an e-filer has to convert the format of an electronic media file for filing. Based on this concern, the committees modified the proposal to add a provision that requires an electronic filer to retain the original electronic media file if it must be converted to a required format for manual filing.

*Filing problems.* One commenter requested that rule 8.72’s court-responsibilities provision speak to filing deadlines. The commenter asked that courts be required to address deadlines or extensions of time in any notice required by the provision. The committees have declined to add provisions concerning deadlines that add responsibilities for the courts because, under rule 8.71, filing a document electronically does not alter any filing deadline. Unless a court elects to provide otherwise in a notice to a party, it would be incumbent on the party or other person adversely affected by a filing problem, on receipt of notice of the problem, to seek relief from the court. Because existing rules already address exemptions from electronic filing (rule 8.71(d)) and a clerk’s rejection of documents for filing based on noncompliance with applicable filing requirements (rule 8.77(b)), the committees chose to eliminate the proposed provision circulated as 8.74(d), which also addressed these issues. If future experience supports reallocating responsibility from electronic filers to the courts, the committees will reconsider the provisions concerning deadlines and rejection or correction of noncompliant electronic filings.

*Virus and harmful computer code requirement.* The appellate practice section of a bar association protested that rule 8.72(b)’s “all reasonable steps” requirement for electronic filers was likely to cause confusion.<sup>2</sup> The commenter suggested that rule 8.72(b)(1) be rewritten to state that “[e]ach electronic filer must: (1) Comply with all electronic filing requirements in these rules and not intentionally file any document containing computer code, including viruses, that might be harmful to the court’s electronic filing system and to other users of that system.”

Based on this comment, the committees recommend clarifying an e-filer’s responsibilities with an advisory committee comment advising electronic filers that an absence of intent to harm is insufficient to comply with the subdivision. The committees did not want inadvertently to condone willful neglect or recklessness, but rather want to encourage e-filers to take affirmative steps to avoid causing harm. The committees recommend giving an example of a reasonable step electronic filers can take to ensure that a filing does not contain harmful computer code in the advisory committee comment to subdivision (b)(1).

*Hyperlinks.* In response to the questions presented in the invitation to comment, some commenters indicated that “hyperlinks” might not be commonly understood, but one court stated that the term is sufficiently clear and does not warrant further explication. Another commenter noted that rule 8.74 encourages the use of hyperlinks, but that the rule was drafted in a manner suggesting that hyperlinks are used only to link to legal authority, not to exhibits and appendixes.

Based on these comments, the committees recommend amending the hyperlinks provision to include appendixes and exhibits. (See Amended Cal. Rules of Court, rule 8.74(b)(5).) With respect to defining the term *hyperlinks*, the committees concluded that concerns about the clarity of the term were unwarranted because the term is reasonably well known and because use of

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<sup>2</sup> The relevant provision of rule 8.72 would provide: “[¶] (1) Take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court’s electronic filing system and to other users of that system.”

hyperlinks is encouraged but not required. The committees, however, support the courts' publishing instructions on how to create hyperlinks.

### ***Page layout and content***

Several comments addressed formatting standards, including page numbering, bookmarking, font, line spacing, page alignment, and margins. With respect to documents prepared for original filing in the reviewing courts, several commenters expressed preferences or concerns about font styles and size, footnote size, use of emphasis, line spacing, page alignment, and margins.

*Page numbering.* The proposed pagination rule, rule 8.74(a)(2), is consistent with the requirements set by local rules around the state. Despite the existing uniformity, one commenter advocated for the use of roman numerals for prefatory pages, such as tables of contents and tables of authorities. According to the commenter, using separate pagination for tables is superior to consecutive page numbering that the courts currently require by local rule because the pagination of the main document (e.g., brief or petition) can be finalized before any tables are created. The committees considered this comment but declined to allow for separate numbering systems for prefatory pages and the main document. As a court commenter supporting the pagination requirement noted, consecutive, all-arabic pagination allows courts and parties to accurately locate a cited page and ensures that page citations are consistent throughout a document. The utility of matching page numbers to an electronic page counter justifies any burden on electronic filers imposed by the pagination requirement. The committees understand that, at least at present, an electronic page counter cannot be reset to match the page number when different page numbering systems are employed in a document. The committees considered allowing e-filers to place tables at the end of a document to avoid problems filers may face when they create tables of contents and authorities under this pagination rule. The committees maintained the provision as circulated, because the proposed pagination rule has been in place for some time by local rule and changing the placement of tables would be a significant change that was not presented for public comment.

*Bookmarking.* Commenters uniformly wrote in favor of requiring bookmarks in electronic documents. Two commenters, however, suggested relaxing the proposed requirements. One commenter asked for an exception to the bookmarking requirement for shorter documents—like requests for extensions of time—where bookmarks might not be as helpful to readers. Another commenter requested that the technical requirement for setting bookmarks to retain a reader's selected zoom setting be voluntary, instead of mandatory, because existing software requires several mouse clicks to set each and every bookmark. The committees considered these requests but chose not to change the bookmarking provision. Creating bookmarks for shorter documents will not be labor-intensive, and if the zoom-level requirement were merely voluntary, many e-filers would rely on default settings that do not preserve a reader's preferred view. Although the bookmarking requirements will require e-filers to spend additional time preparing their documents for filing, the utility of bookmarks for readers outweighs the burdens placed on e-filers.

*Font.* As circulated for public comment, the proposed amendments to rule 8.74 required a proportionally spaced serif font such as Century Schoolbook and expressly prohibited the use of Times New Roman. The proposal came from the Court of Appeal, Second Appellate District's local rule, which seeks to promote readability. Four comments against the prohibition on Times New Roman were received, and two more commenters questioned whether the prohibition on this particular font, which itself is a proportionally spaced serif font, was necessary. Just one commenter supported banning Times New Roman, but that commenter suggested that if Times New Roman were not permitted, filers who do not have Century Schoolbook font installed may choose an even less legible font. Based on these comments, the committees removed the proposal's prohibition on Times New Roman. However, the committees retained the proposal's stated preference for Century Schoolbook, because it is considered to be one of the most readable fonts and is preferred by most appellate judges in the state.

One commenter asked why the rule required 13-point font, instead of 14-point font. Another commenter suggested that footnote size be set at 12-point instead of 13-point font. The local rules of all six appellate districts and the Supreme Court require a 13-point font for body text and footnotes. In light of the existing uniform standard, the committees declined to modify the proposal based on the comments concerning font size.

Several commenters requested that sans-serif fonts be allowed, and one commenter asked that use of all capitals in headings be prohibited because text in all caps is virtually unreadable. To promote readability, the committees recommend permitting use of sans-serif fonts in headings, subheadings, and captions and prohibiting the use of all capitals for emphasis. The committees considered but did not endorse the commenter's request to prohibit all caps in headings, where they are regularly used in short headings like "Introduction," "Discussion," and "Conclusion." If experience shows that practitioners are using all caps for longer headings that are difficult to read, the committees will revisit the issue.

*Line Spacing.* One commenter noted that rule 8.74's 1-1/2 line-spacing requirement is unclear, especially if read in conjunction with rule 8.204(b)(5), which defines single spaced as "six lines to a vertical inch." The committees modified the proposal to identify the requirement as "1.5 spacing," rather than "1-1/2 spacing," because word processors use a decimal to define the line spacing option between single-spaced and double-spaced. Additionally, as noted above, the proposal has since been modified to make rules 8.74 and 8.204(b) now stand alone, eliminating the inconsistency identified by the commenter. To the extent the commenter urged the committee to repeal the definition of *single-spaced* in the provision applicable to paper documents, the committees note that six lines to a vertical inch is a measurement for typewriters. Although line spacing on word processors can be set in various ways, typewriters have greater mechanical limitations. The committees anticipate that those seeking to file in paper form rather than electronically will frequently prepare their documents using a typewriter, and as a result, this archaic provision will continue to be instructive.

*Page alignment.* One commenter asked why rule 8.74 prohibits full-page justification and requested that the formatting rules allow for full justification with hyphenation. The committees

considered this comment but declined to modify the proposal's requirement for left-aligned text. The rule was taken from the Second Appellate District's electronic formatting guidelines, which recognize that left-aligned text is easier to read than justified text.

*Margins.* A commenter noted that Microsoft Word uses default margins of 1-inch, and wondered whether future technologies like the Transcript Assembly Program might allow for 1-inch margins in electronic filings. Based on this and other comments, and as discussed above, the committees modified the proposal to clarify that documents not originally prepared for electronic filing in appellate courts such that the margin requirements for clerks' and reporters' transcripts are not directly affected by rule 8.74's margin requirements. At present, only one appellate district requires 1-1/2 inch margins on all sides. The committees also modified the proposal to provide for 1-inch margins on the top and bottom, so that paper and electronic documents have the same margin requirements. The committees retained the proposed 1-1/2 inch left and right margins because wider side margins allow readers additional room for notations, both on paper and in most annotation software for electronic documents. The committees decided to prioritize the readability and usability of a document (especially briefs and petitions) over the default settings of Microsoft Word, which Microsoft may change in the future and which users can adjust on their own. The committees will consider in the future margin requirements for transcripts after courts have more experience with mandatory electronic filing under the uniform rules, as well as if technological changes warrant revision.

### **Alternatives considered**

This proposal initially focused on rules for exhibits and bookmarking, but was expanded in scope to include comprehensive formatting requirements for documents filed in electronic form. In addition to the initial focus and the alternatives considered in response to the public comments, the committees considered deferring action, but determined that the experience of the Supreme Court and the Courts of Appeal thus far warranted action. The committees concluded that the proposed changes were necessary to (1) institute mandatory electronic filing with limited exceptions, (2) make the appellate rules across the state consistent, and (3) eliminate confusion for appellate court litigants and practitioners who presently must comply with unique formatting requirements in each appellate district. The committees concluded that the proposed changes were necessary to give guidance and direction to e-filers, and to clarify the format requirements for documents filed in paper and electronic form.

### **Fiscal and Operational Impacts**

The proposed rules are intended to make electronic formatting rules consistent in the appellate courts. The committees expect efforts will be needed to amend local rules to harmonize them with the amended rules.<sup>3</sup> The appellate courts likely will incur some cost to train staff on the new

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<sup>3</sup> The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee expressed support for the proposal but raised a concern about the proposal's impact on court operations, namely the time needed to amend local rules. No stakeholders from the Courts of Appeal answered the timing question, so the committees expect that the appellate courts will have adequate time to amend their local rules before the January 2020 effective date.

rules and the procedures arising from them. No other costs or implementation challenges are anticipated.

### **Attachments and Links**

1. Cal. Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252, at pages 13–23
2. Chart of comments, at pages 24–59

Rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252 of the California Rules of Court are amended, effective January 1, 2020, to read:

1 **Rule 8.40. ~~Form of filed documents~~ Cover requirements for documents filed in**  
2 **paper form**

3  
4 **(a) ~~Form~~**

5  
6 ~~Except as these rules provide otherwise, documents filed in a reviewing court may~~  
7 ~~be either produced on a computer or typewritten and must comply with the relevant~~  
8 ~~provisions of rule 8.204(b).~~

9  
10 **~~(b)~~ Cover color**

11  
12 (1)–(2) \* \* \*

13  
14 (3) A paper brief or petition not conforming to (1) or (2) must be accepted for  
15 filing, but in case of repeated violations by an attorney or party, the court  
16 may proceed as provided in rule 8.204(e)(2).

17  
18 **~~(e)~~ (b) Cover information**

19  
20 (1)–(2) \* \* \*

21  
22  
23 **Rule 8.44. Number of copies of filed documents**

24  
25 **(a)–(b) \* \* \***

26  
27 **(c) Electronic copies of paper documents**

28  
29 ~~A court that permits electronic filing will specify any requirements regarding~~  
30 ~~electronically filed documents in the electronic filing requirements published under~~  
31 ~~rule 8.74. In addition, Even when filing a paper document is permissible, a court~~  
32 ~~may provide by local rule for the submission of an electronic copy of a document~~  
33 ~~that is not electronically filed the paper document either in addition to the copies of~~  
34 ~~the document required to be filed under (a) or (b) or as a substitute for one or more~~  
35 ~~of these copies. The local rule must specify the format of the electronic copy and~~  
36 ~~provide for an exception if it would cause undue hardship for a party to submit an~~  
37 ~~electronic copy.~~

38  
39 **Rule 8.46. Sealed records**

40  
41 **(a)–(c) \* \* \***  
42

1 **(d) Record not filed in the trial court; motion or application to file under seal**

2  
3 (1)–(2) \* \* \*

4  
5 (3) To lodge a record, the party must transmit the record to the court in a secure  
6 manner that preserves the confidentiality of the record to be lodged. The  
7 record must be transmitted separately from the rest of a clerk’s or reporter’s  
8 transcript, appendix, supporting documents, or other records sent to the  
9 reviewing court with a cover sheet that complies with rule 8.40(e)(b) if the  
10 record is in paper form or rule 8.74(a)(9) if the record is in electronic form,  
11 and that labels the contents as “CONDITIONALLY UNDER SEAL.” If the  
12 record is in paper format, it must be placed in a sealed envelope or other  
13 appropriate sealed container.

14  
15 (e)–(g) \* \* \*

16  
17 **Rule 8.71. Electronic filing**

18  
19 **(a) Mandatory electronic filing**

20  
21 Except as otherwise provided by these rules, the Supreme Court Rules Regarding  
22 Electronic Filing, ~~the local rules of the reviewing court~~, or court order, all parties  
23 are required to file all documents electronically in the reviewing court.

24  
25 (b)–(g) \* \* \*

26  
27 **Rule 8.72. Responsibilities of court and electronic filer**

28  
29 **(a) ~~Publication of electronic filing requirements~~ Responsibilities of court**

30  
31 (1) The court will publish, in both electronic and print ~~formats~~ forms, the court’s  
32 electronic filing requirements.

33  
34 **~~(b) Problems with electronic filing~~**

35 (2) If the court is aware of a problem that impedes or precludes electronic filing,  
36 it must promptly take reasonable steps to provide notice of the problem.

37  
38 **(b) Responsibilities of electronic filer**

39  
40 Each electronic filer must:



- 1 (1) Take all reasonable steps to ensure that the filing does not contain computer  
2 code, including viruses, that might be harmful to the court's electronic filing  
3 system and to other users of that system;
- 4
- 5 (2) Furnish one or more electronic service addresses, in the manner specified by  
6 the court, at which the electronic filer agrees to accept service; and  
7
- 8 (3) Immediately provide the court and all parties with any change to the  
9 electronic filer's electronic service address.

#### 11 Advisory Committee Comment

12

13 Subdivision (b)(1). One example of a reasonable step an electronic filer may take is to use a  
14 commercial virus scanning program. Compliance with this subdivision requires more than an  
15 absence of intent to harm the court's electronic filing system or other users' systems.

#### 16

#### 17 Rule 8.74. Responsibilities of electronic filer Format of electronic documents

#### 18

#### 19 ~~(a) — Conditions of filing~~

20

21 ~~Each electronic filer must:~~

- 22
- 23 ~~(1) Comply with any court requirements designed to ensure the integrity of~~  
24 ~~electronic filing and to protect sensitive personal information;~~
- 25
- 26 ~~(2) Furnish information that the court requires for case processing;~~  
27
- 28 ~~(3) Take all reasonable steps to ensure that the filing does not contain computer~~  
29 ~~code, including viruses, that might be harmful to the court's electronic filing~~  
30 ~~system and to other users of that system;~~
- 31
- 32 ~~(4) Furnish one or more electronic service addresses, in the manner specified by~~  
33 ~~the court, at which the electronic filer agrees to accept service; and~~  
34
- 35 ~~(5) Immediately provide the court and all parties with any change to the electronic~~  
36 ~~filer's electronic service address.~~

#### 37

#### 38 ~~(b) — Format of documents to be filed electronically~~

- 39
- 40 ~~(1) A document that is filed electronically with the court must be in a format~~  
41 ~~specified by the court unless it cannot be created in that format.~~

1           (2) ~~The format adopted by a court must meet the following minimum~~  
2           ~~requirements:~~

3  
4           ~~(A) The format must be text-searchable while maintaining original document~~  
5           ~~formatting.~~

6  
7           ~~(B) The software for creating and reading documents must be in the public~~  
8           ~~domain or generally available at a reasonable cost.~~

9  
10          ~~(C) The printing of documents must not result in the loss of document text,~~  
11          ~~format, or appearance.~~

12  
13          (3) ~~The page numbering of a document filed electronically must begin with the~~  
14          ~~first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2,~~  
15          ~~3). The page number may be suppressed and need not appear on the cover~~  
16          ~~page.~~

17  
18          (4) ~~If a document is filed electronically under the rules in this article and cannot be~~  
19          ~~formatted to be consistent with a formatting rule elsewhere in the California~~  
20          ~~Rules of Court, the rules in this article prevail.~~

21  
22        **(a) Formatting requirements applicable to all electronic documents**

23  
24        (1) Text-searchable portable document format: Electronic documents must be in  
25        text-searchable portable document format (PDF) while maintaining the  
26        original document formatting. In the limited circumstances in which a  
27        document cannot practicably be converted to a text-searchable PDF, the  
28        document may be scanned or converted to non-text-searchable PDF. An  
29        electronic filer is not required to use a specific vendor, technology, or  
30        software for creation of a searchable-format document, unless the electronic  
31        filer agrees to such use. The software for creating and reading electronic  
32        documents must be in the public domain or generally available at a  
33        reasonable cost. The printing of an electronic document must not result in the  
34        loss of document text, formatting, or appearance. The electronic filer is  
35        responsible for ensuring that any document filed is complete and readable.

36  
37        (2) Pagination: The electronic page counter for the electronic document must  
38        match the page number for each page of the document. The page numbering  
39        of a document filed electronically must begin with the first page or cover  
40        page as page 1 and thereafter be paginated using only arabic numerals (e.g.,  
41        1, 2, 3). The page number for the cover page may be suppressed and need not  
42        appear on the cover page. When a document is filed in both paper and

1 electronic forms, the pagination in both versions must comply with this  
2 paragraph.

3  
4 (3) *Bookmarking:* An electronic bookmark is a descriptive text link that appears  
5 in the bookmarks panel of an electronic document. Each electronic document  
6 must include an electronic bookmark to each heading, subheading, and the  
7 first page of any component of the document, including any table of contents,  
8 table of authorities, petition, verification, memorandum, declaration,  
9 certificate of word count, certificate of interested entities or persons, proof of  
10 service, exhibit, or attachment. Each electronic bookmark must briefly  
11 describe the item to which it is linked. For example, an electronic bookmark  
12 to a heading must provide the text of the heading, and an electronic  
13 bookmark to an exhibit or attachment must include the letter or number of the  
14 exhibit or attachment and a brief description of the exhibit or attachment. An  
15 electronic appendix must have bookmarks to the indexes and to the first page  
16 of each separate exhibit or attachment. Exhibits or attachments within an  
17 exhibit or attachment must be bookmarked. All bookmarks must be set to  
18 retain the reader's selected zoom setting.

19  
20 (4) *Protection of sensitive information:* Electronic filers must comply with rules  
21 1.201, 8.45, 8.46, 8.47, and 8.401 regarding the protection of sensitive  
22 information, except for those requirements exclusively applicable to paper  
23 form.

24  
25 (5) *Size and multiple files:* An electronic filing may not be larger than 25  
26 megabytes. This rule does not change the limitations on word count or  
27 number of pages otherwise established by the California Rules of Court for  
28 documents filed in the court. Although certain provisions in the California  
29 Rules of Court require volumes of no more than 300 pages (see, e.g., rules  
30 8.124(d)(1), 8.144(b)(6), 8.144(g)), an electronic filing may exceed 300  
31 pages so long as its individual components comply with the 300-page volume  
32 requirement and the electronic filing does not exceed 25 megabytes. If a  
33 document exceeds the 25-megabyte file-size limitation, the electronic filer  
34 must submit the document in more than one file, with each file 25 megabytes  
35 or less. The first file must include a master chronological and alphabetical  
36 index stating the contents for all files. Each file must have a cover page  
37 stating (a) the file number for that file and the total number of files for that  
38 document, (b) the volumes contained in that file, and (c) the page numbers  
39 contained in that file. (For example: File 2 of 4, Volumes 3–4, pp. 301–499.)  
40 In addition, each file must be paginated consecutively across all files in the  
41 document, including the cover pages for each file. (For example, if the first  
42 file ends on page 300, the cover of the second file must be page 301.) If a

1 multiple-file document is submitted to the court in both electronic and paper  
2 forms, the cover pages for each file must be included in the paper documents.

3  
4 (6) *Manual Filing:*

5  
6 (A) When an electronic filer seeks to file an electronic document consisting  
7 of more than 10 files, or when the document cannot or should not be  
8 electronically filed in multiple files, or when electronically filing the  
9 document would cause undue hardship, the document must not be  
10 electronically filed but must be manually filed with the court on an  
11 electronic medium such as a flash drive, DVD, or compact disc (CD).  
12 When an electronic filer files with the court one or more documents on  
13 an electronic medium, the electronic filer must electronically file, on  
14 the same day, a “manual filing notification” notifying the court and the  
15 parties that one or more documents have been filed on electronic  
16 media, explaining the reason for the manual filing. The electronic  
17 media must be served on the parties in accordance with the  
18 requirements for service of paper documents. To the extent practicable,  
19 each document or file on electronic media must comply with the format  
20 requirements of this rule.

21  
22 (B) Electronic media files such as audio or video must be manually filed.  
23 Audio files must be filed in .wav or mp3 format. Video files must be  
24 filed in .avi or mp4 format.

25  
26 (C) If manually filed, photographs must be filed in .jpg, .png, .tif, or .pdf  
27 format.

28  
29 (D) If an original electronic media file is converted to a required format for  
30 manual filing, the electronic filer must retain the original.

31  
32 (7) *Page size:* All documents must have a page size of 8-1/2 by 11 inches.

33  
34 (8) *Color:* An electronic document with a color component may be electronically  
35 filed or manually filed on electronic media, depending on its file size. An  
36 electronic document must not have a color cover.

37  
38 (9) *Cover or first-page information:*

39  
40 (A) Except as provided in (B), the cover—or first page, if there is no  
41 cover—of every electronic document filed in a reviewing court must  
42 include the name, mailing address, telephone number, fax number (if  
43 available), email address (if available), and California State Bar number

1 of each attorney filing or joining in the document, or of the party if he  
2 or she is unrepresented. The inclusion of a fax number or email address  
3 on any electronic document does not constitute consent to service by  
4 fax or email unless otherwise provided by law.

5  
6 (B) If more than one attorney from a law firm, corporation, or public law  
7 office is representing one party and is joining in the document, the  
8 name and State Bar number of each attorney joining in the electronic  
9 document must be provided on the cover. The law firm, corporation, or  
10 public law office representing each party must designate one attorney to  
11 receive notices and other communication in the case from the court by  
12 placing an asterisk before that attorney's name on the cover and must  
13 provide the contact information specified under (A) for that attorney.  
14 Contact information for the other attorneys from the same law firm,  
15 corporation, or public law office is not required but may be provided.

16  
17 **(b) Additional formatting requirements applicable to documents prepared for**  
18 **electronic filing in the first instance in a reviewing court**

19  
20 (1) Font: The font style must be a proportionally spaced serif face. Century  
21 Schoolbook is preferred. A sans-serif face may be used for headings,  
22 subheadings, and captions. Font size must be 13-points, including in  
23 footnotes. Case names must be italicized or underscored. For emphasis,  
24 italics or boldface may be used or the text may be underscored. Do not use all  
25 capitals (i.e., ALL CAPS) for emphasis.

26  
27 (2) Spacing: Lines of text must be 1.5 spaced. Footnotes, headings, subheadings,  
28 and quotations may be single-spaced. The lines of text must be unnumbered.

29  
30 (3) Margins: The margins must be set at 1-1/2 inches on the left and right and 1  
31 inch on the top and bottom. Quotations may be block-indented.

32  
33 (4) Alignment: Paragraphs must be left-aligned, not justified.

34  
35 (5) Hyperlinks: Hyperlinks to legal authorities and appendixes or exhibits are  
36 encouraged but not required. However, if an electronic filer elects to include  
37 hyperlinks in a document, the hyperlink must be active as of the date of  
38 filing, and if the hyperlink is to a legal authority, it should be formatted to  
39 standard citation format as provided in the California Rules of Court.  
40

1 **(c) Additional formatting requirements for certain electronic documents**

- 2
- 3 (1) Brief: In addition to compliance with this rule, an electronic brief must also
- 4 comply with the contents and length requirements stated in rule 8.204(a) and
- 5 (c). The brief need not be signed. The cover must state:
- 6
- 7 (A) The title of the brief;
- 8
- 9 (B) The title, trial court number, and Court of Appeal number of the case;
- 10
- 11 (C) The names of the trial court and each participating trial judge; and
- 12
- 13 (D) The name of the party that each attorney on the brief represents.
- 14
- 15 (2) Request for judicial notice or request, application, or motion supported by
- 16 documents: When seeking judicial notice of matter not already in the
- 17 appellate record, or when a request, application, or motion is supported by
- 18 matter not already in the appellate record, the electronic filer must attach a
- 19 copy of the matter to the request, application, or motion, or an explanation of
- 20 why it is not practicable to do so. The request, application, or motion and its
- 21 attachments must comply with this rule.
- 22
- 23 (3) Appendix: The format of an appendix must comply with this rule and rule
- 24 8.144 pertaining to clerks' transcripts.
- 25
- 26 (4) Agreed statement and settled statement: The format for an agreed statement
- 27 or a settled statement must comply with this rule and rule 8.144.
- 28
- 29 (5) Reporter's transcript and clerk's transcript: The format for an electronic
- 30 reporter's transcript must comply with Code of Civil Procedure section 271
- 31 and rule 8.144. The format for an electronic clerk's transcript must comply
- 32 with this rule and rule 8.144.
- 33
- 34 (6) Exhibits: Electronic exhibits must be submitted in files no larger than 25
- 35 megabytes, rather than as individual documents.
- 36
- 37 (7) Sealed and confidential records: Under rule 8.45(c)(1), electronic records
- 38 that are sealed or confidential must be filed separately from publicly filed
- 39 records. If one or more pages are omitted from a record and filed separately
- 40 as a sealed or confidential record, an omission page or pages must be inserted
- 41 in the publicly filed record at the location of the omitted page or pages. The
- 42 omission page or pages must identify the type of page or pages omitted. Each
- 43 omission page must be paginated consecutively with the rest of the publicly

1 filed record. Each single omission page or the first omission page in a range  
2 of omission pages must be bookmarked and must be listed in any indexes  
3 included in the publicly filed record. The PDF counter for each omission  
4 page must match the page number of the page omitted from the publicly filed  
5 record. Separately-filed sealed or confidential records must comply with this  
6 rule and rules 8.45, 8.46, and 8.47.

7  
8 **(d) Other formatting rules**

9  
10 This rule prevails over other formatting rules.

11  
12 **Advisory Committee Comment**

13  
14 **Subdivision (a)(1).** If an electronic filer must file a document that the electronic filer possesses  
15 only in paper form, use of a scanned image is a permitted means of conversion to PDF, but  
16 optical character recognition must be used, if possible. If a document cannot practicably be  
17 converted to a text-searchable PDF (e.g., if the document is entirely or substantially handwritten,  
18 a photograph, or a graphic such as a chart or diagram that is not primarily text based), the  
19 document may be converted to a non-text-searchable PDF file.

20  
21 **Subdivision (a)(3).** An electronic bookmark’s brief description of the item to which it is linked  
22 should enable the reader to easily identify the item. For example, if a declaration is attached to a  
23 document, the bookmark to the declaration might say “Robert Smith Declaration,” and if a  
24 complaint is attached to a declaration as an exhibit, the bookmark to the complaint might say  
25 “Exhibit A, First Amended Complaint filed 8/12/17.”

26  
27 **Subdivision (b).** Subdivision (b) governs documents prepared for electronic filing in the first  
28 instance in a reviewing court and does not apply to previously created documents (such as  
29 exhibits), whose formatting cannot or should not be altered.

30  
31 **Subdivision (c)(7).** In identifying the type of pages omitted, the omission page might say, for  
32 example, “probation report” or “Marsden hearing transcript.”

33  
34 **Rule 8.77. Actions by court on receipt of electronic filing**

35  
36 **(a) \* \* \***

37  
38 (1)–(2) \* \* \*

39  
40 (3) *Transmission of confirmations*

41  
42 The court must arrange to send receipt and filing confirmation to the  
43 electronic filer at the electronic service address that the filer furnished to the

1 court under rule 8.74(a)(4) 8.72(b)(2). The court or the electronic filing  
2 service provider must maintain a record of all receipt and filing  
3 confirmations.

4  
5 (4) \* \* \*

6  
7 (b)–(e) \* \* \*

8  
9 **Rule 8.78. Electronic service**

10  
11 (a) \* \* \*

12  
13 (1) \* \* \*

14  
15 (2) A party indicates that the party agrees to accept electronic service by:

16  
17 (A) \* \* \*

18  
19 (B) Electronically filing any document with the court. The act of electronic  
20 filing shall be deemed to show that the party agrees to accept service at  
21 the electronic service address that the party has furnished to the court  
22 under rule 8.74(a)(4) 8.72(b)(2), unless the party serves a notice on all  
23 parties and files the notice with the court that the party does not accept  
24 electronic service and chooses instead to be served paper copies at an  
25 address specified in the notice.

26  
27 (3) \* \* \*

28  
29 (b)–(g) \* \* \*

30  
31 **Rule 8.204. Contents and form of briefs**

32  
33 (a) \* \* \*

34  
35 (b) **Format of briefs filed in paper form**

36  
37 (1)–(9) \* \* \*

38  
39 (10) If filed in paper form, the cover must be in the color prescribed by rule  
40 8.40(b)(a). In addition to providing the cover information required by rule  
41 8.40(e)(b), the cover must state:

42  
43 (A) The title of the brief;



1  
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34

- (B) The title, trial court number, and Court of Appeal number of the case;
- (C) The names of the trial court and each participating trial judge; and
- (D) The name of the party that each attorney on the brief represents.

(11) \* \* \*

(c)–(e) \* \* \*

**Rule 8.252. Judicial notice; findings and evidence on appeal**

**(a) Judicial notice**

(1)–(2) \* \* \*

(3) If the matter to be noticed is not in the record, the party must ~~serve and file a copy with the motion or explain~~ attach to the motion a copy of the matter to be noticed or an explanation of why it is not practicable to do so. The pages of the copy of the matter or matters to be judicially noticed must be consecutively numbered, beginning with the number 1. The motion with attachments must comply with rule 8.74 if filed in electronic form.

(b) \* \* \*

**(c) Evidence on appeal**

(1)–(2) \* \* \*

(3) For documentary evidence, a party may offer ~~the original, a certified copy, a photocopy, or, in a case in which electronic filing is permitted, an electronic copy,~~ or if filed in paper form, the original, a certified copy, or a photocopy. The court may admit the document into evidence without a hearing.

## SPR19-07

### Appellate Procedure: Uniform Formatting Rules for Electronic Documents

(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committees Responses</b>
1.	Jessica Coffin Butterick Lead Appellate Court Attorney Court of Appeal, Second Appellate District	AM	<p>I would agree with the new rules if modified. Please see my comments below.</p> <p>Rule 8.74(a)(8) — Font 13 pt Century in footnotes is HUGE. Footnote point size should be 12. I hate Times New Roman as much as the next person and am glad you're banning it, but there are lots of terrible system fonts out there. If you're going to ban TNR, please also ban Cambria, which is even worse, and will be people's next choice if they don't have Century Schoolbook installed on their machines.</p> <p>Rule 8.74(a)(9) — Spacing Headings should be added to the list of things that can be single-spaced to clarify that they are they not considered "lines of text" that must be 1.5 spaced. (Headings should not be single-spaced.) More importantly, what does 1.5 spacing mean in the context of this rule? True 1.5 line spacing (150% of point size) is 20.5 points for a 13pt font. This is what the rule should mean. In Microsoft Word, however, the "1.5 lines" spacing option yields spacing of about 175% of point size, and many people seem to think that's what 1.5 spacing means. (See explanation at <a href="https://practicaltypography.com/line-spacing.html">https://practicaltypography.com/line-spacing.html</a>) On its own, that doesn't matter all that much, but it becomes a big problem if we're supposed to</p>	<p>The committees thank the commenter and note the support for the proposal if modified.</p> <p>The committees appreciate the commenter's concerns. The committees decline to recommend differing font sizes, or banning additional proportional-spaced fonts. Based on this and other comments, the committees have deleted the proposals' prohibition on the use of Times New Roman, but the committees have preserved the preference for Century Schoolbook, because it is considered to be one of the most readable fonts.</p> <p>The committees agree that headings should be added to the list of things that may be single-spaced, and made this change. To the extent the comment relates to interaction between rules 8.74 and rule 8.204(b), based on this comment and others, the committees have modified the proposed amendments to rules 8.74 and 8.204(b).</p> <p>The committees considered the commenter's concern about rule 8.204(b)(5)'s line spacing</p>

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**SPR19-07****Appellate Procedure: Uniform Formatting Rules for Electronic Documents****(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

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			<p>interpret 1.5 spacing in terms of rule 8.204(b)(5). That rule unwisely redefines a typographical term in California by defining single line spacing as “six lines to a vertical inch.” Applying that definition, 1.5 line spacing is 4 lines per vertical inch. But neither true 1.5 line spacing (150% of point size) nor MS Word line spacing (175% of point size) complies with that definition. (Please see the attached document, which I prepared to demonstrate what the rule 8.204(b)(5) definition looks like in practice and how it differs from what both typographers and MS Word adherents consider 1.5 line spacing. It also shows why the definition is problematic for single line spacing with 13pt fonts.) [Commenter’s document not attached to comment chart.]</p> <p>Or are we supposed to disregard rule 8.204(b)(5)? I can’t tell.</p> <ul style="list-style-type: none"> <li>· Proposed rule 8.40(a) tells us we must comply with “relevant format provisions” of rule 8.204. This certainly seems relevant.</li> <li>· Proposed rule 8.74(d) tells us to comply with other formatting provisions unless it’s impossible to do so. It’s possible to comply with rule 8.204(b)(5), even if it’s not advisable.</li> <li>· Proposed rule 8.74(b)(1) tells us we must comply with rule 8.204 “except for the requirements exclusively applicable to paper format including the provisions in rule 8.204(b) (2), (4), (5), and (6).” I find this baffling (see my comments to rule 8.74(b)(1) below), but if it means we shouldn’t</li> </ul>	<p>measurement, as well as the commenter’s public comment submitted in advance of the Appellate Advisory Committee’s open meeting, but determined that the line spacing provision for paper documents exists to assist those preparing documents using typewriters, where line spacing options are limited by mechanics.</p> <p>The committees thank the commenter for this input. Based on this comment and others, the committees have modified the proposal to clarify the line-spacing requirements of rule 8.74, and to eliminate the cross-references between rule 8.74 and rules 8.40 and 8.204(b). The proposal now would amend subdivision (b) of rule 8.204 to apply only to documents filed in paper form, and to add the relevant provisions of rules 8.40(c) and 8.204(b) to rule 8.74.</p>

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			<p>comply with the 6-lines-per-vertical-inch definition of line spacing, the consequence is that we'll be using at least TWO DIFFERENT definitions of the same typographical term in California courts depending on the method of filing. I suppose that's better than having to comply with rule 8.204(b)(5), but revising rule 8.204(b)(5) seems like a better choice. Please revise rule 8.204(b)(5) as part of this project. It should be consistent with this rule.</p> <p>Rule 8.74(a)(11) — Alignment Why can't paragraphs be justified? This seems arbitrary. Justification should be allowed as long as hyphenation is turned on. Regardless, if we're going to regulate things like justification, while we're at it, can we please tell people not to use all-caps headings if the heading is more than 3–5 words long? They are impossible to read. (Rule 8.204(b)(3) allows the complete heading to be in capital letters.)</p> <p>Rule 8.74(b)(1) — Brief As mentioned above, you should really, really revise rule 8.204 as part of this project. It should be consistent with rule 8.74(a). If you're not going to revise rule 8.204, you need to, AT MINIMUM, revise proposed rule 8.74(b)(1) to tell people EXACTLY which provisions of rule 8.204 continue to apply to electronically-filed documents and which don't. For example: “Electronic filers must still comply with rule</p>	<p>The committees decline to recommend adding an allowance for justified alignment because left-aligned text is easier to read than justified text. Based on this comment, the committees have proposed adding a prohibition on the use of all capitals for emphasis but did not endorse the commenter's request to prohibit all caps in headings, where they are regularly used in short headings like “Introduction,” “Discussion,” and “Conclusion.”</p> <p>The committees thank the commenter for this input. Based on this and other comments, the committees have modified the proposal to clarify that rule 8.204(b) would not apply to electronic filings. The relevant requirements will instead be in rule 8.74.</p>

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			<p>8.204(X), (Y), and (Z). They do not need to comply with (R), (S), or (T), which only apply to paper filers.” I do statutory interpretation for a living. I have thought deeply and at length about legal typography. Yet, based on the text of proposed rule 8.74(b)(1), I would be hard-pressed to tell you which provisions of rule 8.204 continue to apply. Does “including the provisions in rule 8.204(b)(2), (4), (5), and (6)” refer to the requirements electronic briefs must also comply with? Or, since there’s no comma after the word “format,” is that text part of the “except for” clause, meaning that those provisions are among those that are exclusively applicable to paper format? It would be a lot more straightforward if you (1) made the rule two sentences, and (2) made it clear which provisions are still in and which are out.</p> <p>Rule 8.40(a) — Form of electronic documents This rule tells me I must comply with rule 8.74 AND rule 8.204. But rule 8.74(b) tells me I don’t need to comply with the provisions that exclusively relate to paper filing. Unfortunately, as discussed above, I don’t know what the relevant portions of rule 8.204 are.</p>	<p>Based on this comment and others, the committees have modified the proposal to eliminate the cross-references between rule 8.74 and rules 8.40 and 8.204(b). The proposal now would amend subdivision (b) of rule 8.204 to apply only to documents filed in paper form, and to add the relevant provisions of rules 8.40(c) and 8.204(b) to rule 8.74.</p>
2.	California Academy of Appellant Lawyers by John Taylor, Jr., President Burbank	A	As the current president of the California Academy of Appellate Lawyers, I’m writing on behalf of its membership to support SPR19-07. The Academy consists of more than 100 California appellate lawyers with substantial experience in the briefing	The committees thank the commenter, and note the California Academy of Appellant Lawyers’ support for the proposal.

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			<p>and argument of appeals in the California court system. The Academy has a vital interest in ensuring that the rules governing appellate practice promote the efficient and fair administration of justice at the appellate level. The Academy strongly endorses the enactment of uniform requirements for electronic filing throughout the State. We have some suggestions on the content of the proposed new state-wide rules for electronic documents filed in the appellate courts. It appears that in seeking to accommodate less technologically advanced Districts, the proposed rules will impose some limitations on more technologically advanced Districts and the lawyers who have cases there. We therefore strongly urge that, if the proposed rules are adopted in their present form, steps be taken to rapidly improve all Districts’ technological capability so there can be uniform rules that permit the best practices that more advanced Districts already follow. The Academy has identified four items for comment, the first two of which involve subjects that should be revised when technologically feasible to increase access to e-filing.</p> <p>1. File number/size limitation. Proposed rules 8.74(a)(5) &amp; (6) indicate that electronic files can be up to 25MB, but (i) under subdivision (5) they must be limited to 300 pages if that is what the other rules require—particularly including appendices; and (ii) under subdivision (6) “an electronic document consisting of more than</p>	<p>The committees appreciate the commenter’s input and have modified the proposed multiple-file provision to allow an electronic filing if the combined volumes of an electronic filing satisfy the 25 megabytes file-size limit and the individual component volumes of the electronic filing comply with any applicable 300-page</p>

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			<p>five files” must be manually filed (in electronic form, but manually rather than e-filed).</p> <p>In other words, any appendix of more than five 300-page volumes must be filed manually even if the total file size is less than 25MB. And, apparently, only a single 25MB file—not multiple files—can be e-filed, so that if a 4-volume appendix exceeds 25M it must be manually filed, if even it could be filed as a 20MB and a 10MB file.</p> <p>Appendices that exceed five 300-page volumes are relatively common—and indeed frequent for our members, who tend to handle large, complex cases. In recent years, these appendices could be filed entirely electronically in some Districts. The proposed limitations therefore represent a step backward for lawyers and their staff in those Districts, creating more work and reducing some existing benefits of electronic filing.</p> <p>2. Documents with color components Rule 8.74(a)(13) prohibits electronic filing of “an electronic document with any color component.” While many judicial readers may not care about colored covers or signatures, color can be an important part of a presentation. For example, a key exhibit may only make sense in color. A party may even want to include that color exhibit in their brief because it lucidly explains something that text cannot effectively convey. The Academy suggests</p>	<p>requirement(s). The proposal also would amend the manual filing requirement for multiple files or volumes, changing the limit to 10 rather than 5. The committees will consider additional changes in the future if they are supported by technological changes.</p> <p>The committees agree that color components may be helpful, and have modified the proposal to allow for color components in electronic filings as long as the file complies with the file-size limit.</p>

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			<p>that the courts may not wish to discourage documents with color that can make the document more useful to the court.</p> <p>The invitation to comment says that color “causes problems with ACCMS” (p. 4), but doesn’t explain the nature of those problems. The proposal suggests that PDFs with color components are not problematic. Because any document with color can be converted to PDF, the rule could require that any document with a color component (other than videos) must be filed in PDF and, in that case, could be filed electronically, rather than manually. While color PDFs can be large, PDF programs provide ways to reduce the file size. Rather than banning color, the present or future rules could include technical specifications that keep file sizes small. Manual filing should remain an option, but the rules should make it unnecessary.</p> <p>3. Manual filing and date of filing It would seem fair to parties and practitioners throughout the state that a manually filed document be considered filed on the date the notice of manual filing is submitted, and the physical electronic media with the actual document is sent to the court, rather than requiring the electronic media to be delivered to the court on the due date.</p>	<p>The committees have confirmed that color does not cause problems for ACCMS, but that color components may cause loading problems because color components increase file size.</p> <p>The committees thank the commenter for this input. The committees decline to add provisions concerning deadlines and effective filing dates where service and delivery requirements already exist in the rules. The committees will revisit the issue if courts’ experience with manual delivery of electronic media warrants additional action.</p>

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			<p>4. Paper copies                      We suggest the rules provide that in cases in which the Court wants paper copies of a filing, the filer be notified of that requirement by email. The filer should be given a specific deadline to file the paper copy. The Ninth Circuit has followed this practice for many years, and it works well. Among other things, this avoids parties submitting paper copies only to find that the clerk requests changes to a document, requiring another set of paper copies to be prepared and delivered. It will also ensure the Courts receive paper copies timely, as requirements for paper are few and diminishing and such requirements can be easily overlooked.</p> <p>In sum, the Academy supports state-wide uniformity for e-filing procedures, but hopes that the various appellate districts will strive to achieve technological uniformity, so that the problems identified above can be corrected soon, if not in the current rule cycle.</p>	<p>The committees appreciate this input, and note that the proposal does not require courtesy paper copies of electronic filings.</p> <p>No response required.</p>
3.	Court of Appeal, Fifth Appellate District by Brian Cotta, Clerk/Executive Officer	NI	<p>In regard to: “Proposed subdivision (a)(13) specifies that a document with any color component must be manually filed rather than electronically filed. This is because color causes problems in ACCMS. The subdivision prohibits color components in electronically filed documents.”</p> <p>Comment: Since the documents and viewing location will be changed from ACCMS to Hyland OnBase, will the existing challenge/issue not be</p>	<p>The committees appreciate the commenter’s concern. Based on this and other comments, the committees have modified the proposal to allow</p>

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			<p>resolved on its own rather soon or does another technical issue apply that is unrelated to where the actual document(s) is/are stored or accessed?</p> <p>In regard to: “Rule 8.124 (appendixes), 8.144 (form of the record), and 8.212 (service and filing of briefs) were reviewed, and it was determined that amendments to those rules are not needed at this time.”</p> <p>Comment: I would kindly suggest and request that Rule 8.144 (Form of the record) be updated to require 1.0 inch margins (or larger from left edge) rather than 1.25. My reasoning to justify the request is that Microsoft Word used to have default margins of 1.25 inch (version 2003 and prior), but since Microsoft Word 2007, have 1.0 inch margins. The margin requirement is/was likely to allow for binding and related hole punching. However, with electronic use now surpassing what is actually printed, loosening this requirement will also for more progressive technology applications (e.g. TAP) to be used for clerk’s transcript assembly and therefore be in compliance of the rule.</p>	<p>for color components in electronic filings as long as the file complies with the file-size limit.</p> <p>The committees thank the commenter for this input. With respect to the commenter’s suggestion to amend rule 8.144 (Form of record) to provide for 1-inch margins, that rule is beyond the scope of this proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration if technological changes warrant change to margin requirements for clerk’s and reporter’s transcripts. To the extent this comment relates to the 1-1/2 inch margin requirement found in proposed rule 8.74, the proposed rule amendments are intended to implement best practices from the courts of appeal. The committees considered 1-inch margins but chose 1-1/2 inch margins because wider side margins allow readers additional room for notations, both on paper and in most annotation software for electronic documents. In choosing a margin requirement, the committees weighed the readability of a document over the default settings of Microsoft Word. Microsoft Word is not the only word processing software that practitioners use to create electronic filings, and default settings change and can be adjusted.</p>

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				Based on this and other comments, however, the committees have added a proposed subdivision to rule 8.74 providing that the margin provision applies to documents prepared for filing in the first instance in the reviewing court, not to documents like transcripts generated in the superior courts.
4.	Criminal Justice Legal Foundation by Kent Scheidegger, Legal Director and General Counsel Sacramento	NI	<p>The Criminal Justice Legal Foundation is a nonprofit, public interest organization promoting the rights of victims of crime in the criminal justice system. We submit this comment regarding the proposed rules on formatting electronic documents. We are particularly concerned with the formatting of appellate briefs, as that is our primary activity in the judicial system.</p> <p>Proposed Rule 8.74(a)(2) quite reasonably requires that “[t]he electronic page counter for the electronic document must match the page number for each page of the document.” * * *</p> <p>What is most remarkable about the rule’s prohibition of traditional numbering, though, is the complete absence of any reason for it. Traditional numbering, if matched in the PDF file, causes no inconvenience to the reader whatever. There is simply no reason to forbid it. The United States Supreme Court allows it. The federal courts of appeals allow it. California courts should allow it.</p>	<p>The committees thank the commenter for providing input on this proposal.</p> <p>The committees considered but declined to modify the proposal as suggested to permit separate numbering for prefatory pages. The proposal’s pagination requirement implements rules that already exist in California’s appellate courts. All six appellate districts and the Supreme Court use consecutive arabic-numbering as set forth in the proposal. The committees appreciate that numbering all pages, including preliminary pages such as tables, in this manner may require additional preparation time, but consecutive pagination allows courts and parties to accurately locate the cited pages and ensures that page citations are consistent throughout a document. The utility of page numbers that match an</p>

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			<p>CJLF respectfully suggests that the second and third sentences of the proposed Rule 8.74(a)(2) be deleted and the language in italics below inserted:</p> <p>(2) <i>Pagination: The electronic page counter for the electronic document must match the page number for each page of the document. This requirement may be met either by (i) beginning with the first page or cover page as page 1 and using only Arabic numerals (e.g., 1, 2, 3), or (ii) using Roman numerals for the tables and Arabic numerals for the body of the document and conforming the electronic page counter of the electronic document to match. The page number for the cover page may be suppressed and need not appear on the cover page, or if method (ii) above is used the cover page may be unnumbered. When a document is filed in both paper and electronic formats, the pagination in both versions must comply with this subparagraph.</i></p> <p>[The commenter provided extensive comments, not all of which addressed specific provisions of the proposal. Certain portions of the comment therefore are not included in this chart.]</p>	<p>electronic page counter (which cannot be re-set to match the page number) justifies any burden on electronic filers imposed by this pagination requirement. The committees will reconsider this requirement if technology changes.</p>
5.	Jeffrey Ehrlich Ehrlich Law Firm Claremont	NI	<p>I am a certified appellate specialist and have been practicing appellate law in California for over 35 years. I would urge the Council not to adopt the current proposal concerning the font style or typefaces that are acceptable. The current proposal seems to uncritically track the conclusions of the ABA’s “Leap from E-filing” publication, which</p>	<p>The committees thank the commenter for this input. Based on this and other comments, the committees have deleted the proposal’s prohibition on the use of Times New Roman.</p>

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			<p>in turn seems to express the idiosyncratic beliefs of the author or authors of that publication about which typefaces are desirable.</p> <p>First, I see no reason to ban Times New Roman. While that font is too small to read comfortably in 12-point weight, it's fine in 13-point or 14-point. I don't use that font, but the custom "Equity" font that I do use, which was created by Matthew Butterick, is very similar. By banning Times New Roman font, the proposal adds uncertainty about what fonts are acceptable, particularly because Times New Roman is a proportionally spaced font with a serif face, as the rule requires.</p> <p>Second, with the update to the rules concerning typeface styles, I think it's time to delete the ban on san serif fonts. I note that this comment form uses a san serif font, and it is highly readable. Most electronic devices now display text in san serif fonts, and they are highly readable -- perhaps more readable than fonts with a serif face.</p> <p>When I started in appellate practice, Horvitz &amp; Levy used a very readable san serif font for all of its briefs. Given the chance, I would love to use Matthew Butterick's "Concourse" san serif font, which is highly readable and very attractive.</p>	<p>No further response required.</p> <p>The committees appreciate the commenter's input on this issue. The committees decline to recommend allowing sans-serif fonts in body and footnote text because of their more limited readability, but the committees have recommended adding an allowance for sans-serif fonts in headings, subheadings, and captions.</p>
6.	Horvitz & Levy by Andrea Russi, Senior Counsel San Francisco	A	<p>We agree with this proposal and believe adopting one uniform rule for electronic filing across the six districts will make life easier for everyone.</p> <p>One suggestion:</p>	<p>The committees thank the commenter for this input and note the agreement with the proposal.</p>

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			The new electronic filing rule does not specifically address the service of electronic documents. The current version of Rule 8.78 addresses electronic service but neither rule incorporates the language of the current local rules on electronic filing. The existing local rules address TrueFiling. (See Third District Rule 5(l); Sixth District Rule 2(j); First District Rule 16(j)). The uniform electronic filing rule should contain similar language about service. The new rule on electronic filing should cross-reference Cal Rules of Court, Rule 8.78 re: Electronic Service. Revised Rules 8.72 or 8.74 should contain language about the service of electronic filings, including an explanation of TrueFiling.	The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will consider this suggestion during the next rules cycle.
7.	Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee	A	The JRS notes the following impact to court operations: <ul style="list-style-type: none"> <li>• Requires development of local rules and/or forms.</li> </ul> The JRS also notes that the proposal should be implemented because it seeks to streamline and establish consistencies for electronic filing requirements among all appellate courts. As it will also require local rule changes, a 3-month period of time considering the rule revision process may be insufficient depending upon when the changes are approved. A 6-month time table is more realistic.	The committees appreciate the commenter’s input and note JRS’s support for the proposal.
8.	Hon. Jo-Lynne Lee Superior Court of Alameda County	NI	I would oppose a change to the appellate rules prohibiting the use of Times New Roman. I prefer this font myself and don’t understand the reason why it should be prohibited.	The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the proposal’s prohibition on the use of Times New Roman.

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			Perhaps it is because increasing the font size to 13 impacts use of Times New Roman? An explanation would help.	
9.	Lynn Loschin Senior Research Attorney Court of Appeal, Fourth Appellate District	NI	<p>As a research attorney who works with e-filed documents every day, I appreciate the opportunity to comment on the proposed changes.</p> <p>Pagination: Clarification that hard-coded page numbers must match electronic page counters is very useful. Being able to see what page I am looking at by looking at the counter, rather than scrolling to the bottom of the page, saves a great deal of time. It's also much more efficient to find pages using the counter than it is to scroll or search for them. I support this proposed change.</p> <p>Bookmarks: The requirement that bookmarks retain the reader's selected zoom setting is particularly welcome, as this has been a consistent problem with e-filed documents. When this option is not selected, it renders both bookmarks and the ability to use custom zoom settings less useful, and there is no way to quickly change all bookmarks to this option in bulk. I support this proposed change.</p> <p>Fonts: I am uncertain about prohibiting the use of Times New Roman. It's what everyone is must accustomed to and is the standard for most courts around the country, including California's trial courts. Further, there are far worse fonts that could be chosen that aren't specifically banned.</p>	<p>The committees thank the commenter for providing input on this proposal.</p> <p>The committees note the commenter's support for 8.74's pagination requirements.</p> <p>The committees note the commenter's support for 8.74's bookmarking requirements, including retention of a reader's selected zoom setting.</p> <p>The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the proposal's prohibition on the use of Times New Roman.</p>

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**SPR19-07****Appellate Procedure: Uniform Formatting Rules for Electronic Documents****(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committees Responses</b>
			<p>I am also unsure why sans serif fonts are not allowed - they generally look better on screens (while serif fonts look better in print), which is why most web sites, including courts.ca.gov, use sans serif fonts. So much of our work is done on screens now that I am not sure that prohibiting all sans serif fonts is the direction the courts should be going.</p> <p>I would suggest a modification to the proposed rule that recommends specific fonts (maybe two or three others in addition to Century), but does not ban either Times New Roman or all sans serif fonts.</p>	<p>The committees decline to recommend allowing sans-serif fonts in body and footnote text because of their more limited readability, but the committees have recommended adding an allowance for sans-serif fonts in headings, subheadings, and captions.</p> <p>See responses above.</p>
10.	Steven Murray Sherman Oaks	NI	<p>The rules regarding useable fonts should not be changed. Prohibiting Times New Roman and requiring Century Schoolbook would seriously interfere with many small firms and sole practitioners who have established formats for appellate work. The cost of appellate work is already so high, why enact a new rule which would take significant time and effort to implement. And prohibiting 14 point fonts (as this Equity Text A) does a disservice to the appellate staff and justices which have to read volumes of material.) In plain English, don't fix what is not broken.</p> <p>If any changes are needed (and I seriously doubt that), make them optional. Or better yes, as now, let each Division of the Court of Appeal or the Supreme</p>	<p>The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the proposal's prohibition on the use of Times New Roman. The committees decline, however, to recommend allowing font sizes other than 13-point.</p> <p>The committees appreciate the commenter's input, but favor uniformity over the existing patchwork of local rules, which make practice in the appellate courts more complicated than is necessary.</p>

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			Court make its own determination if any thinks change is necessary. Note the Second District stands alone, there has been no rush to follow.	
11.	Orange County Bar Association (OCBA) by Deirdre Kelly, President	AM	The OCBA believes the proposal appropriately addresses its stated purposes if amended as follows: (1) proposed Rule 8.40 provides for electronic filing “unless these rules provide otherwise” but no references are given to any of the exceptions which are given to the basic format provisions; to this point the OCBA can only determine the “exceptions” to be under Rules 8.44, 8.71, 8.74 & 8.79 for undue hardship, significant prejudice, format problems, self-represented parties, trial courts, and Supreme Court rules, but they are scattered about the rules and difficult to locate; (2) proposed Rule 8.44(c) defeats the purpose of creating uniform rules by allowing “by local rule” for required submission of electronic copies of any paper documents which may be authorized for filing by the rules; this authorization defeats the purposes of all stated exceptions to the electronic filing rules; (3) the OCBA recommends that the Judicial Council also consider amendments to the following additional rules which are applicable to electronic filing, service, signatures, and documents: Rule 8.42 (requirements for signatures), Rule 8.45 (general provisions for sealed and confidential records), Rule 8.75 (requirements for signatures), Rule 8.78 (electronic service), Rule 8.79 (Court order for electronic service), Rule 8.144 (form of the record), and Rule 8.254 (new authorities).	<p>The committees thank the commenter and note the OCBA’s support for the proposal if modified. Based on this and other comments, the committees deleted the cross-references to exceptions in rule 8.40(a).</p> <p>With respect to rule 8.44(c)’s allowance for local rules requiring electronic copies of paper filings, the committees appreciate that local rules may not be uniform, which is the principal goal of this proposal. However, the proposed requirement here applies only to paper filings, and paper filers likely will not be able to comply with the uniform formatting requirements set forth in these rules. Therefore, the committees defer to the courts as to what format they require for electronic copies of paper filings.</p> <p>With respect to amending additional rules in title 8 that are applicable to electronic filing, service, signatures, and other documents, the suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule</p>

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				10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration.
12.	Daniel Repp Sacramento	NI	<p>I'm offering comment in response to proposed Rule 8.74. Specifically, I write to urge the committee to change that portion of the rule (8.74(a)(8)) that would bar the use of Times New Roman of appellate briefs. Times New Roman should not be banned.</p> <p>* * *</p> <p>(1) There's No Conflict Between the Appellate Districts Regarding Font Choice, So There Is No Need for a Uniform Rule Regarding Font Choice</p> <p>I do not see how the specific proscription against Times New Roman furthers the purpose of uniformity in appellate court electronic document filing requirements. First, the e-filing requirements of only one district (i.e., the Second District) actually touch on the subject matter of font choice, so there is no true conflict among the Districts' Local Rules that has to be ironed out with a uniform rule. In this sense, the portion of the rule banning the use of Times New Roman (8.74(a)(8)) goes to far.</p> <p>* * *</p> <p>Reasonable minds can disagree about what's easiest on the eyes (I can read Times New Roman all day), but I don't think it's fair for one person's idea of what's readable (Century Schoolbook) to come at the</p>	<p>The committees thank the commenter for this input. Based on this and other comments, the committees have deleted the proposal's prohibition on the use of Times New Roman.</p> <p>No response required.</p> <p>No response required.</p>

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			<p>expense of someone else's choice on the matter (whatever they prefer that's easiest on their eyes). At the risk of sounding like someone who's already read too much into this, I'm also going to say that I can't help but worry that this proposed rule unfairly favors the convenience of appellate justices and their staff (a small population) at the expense of practicing lawyers and their staff (a much larger body by comparison).</p> <p>(5) People Should Be Allowed to Use San Serif Fonts, Even if Some People Hate Them</p> <p>I understand that sans serif fonts can come off as too casual (I disagree with their use in pleadings), but this one (Century Gothic) is more readable than Arial and Tahoma, and even some of the fancy serif fonts out there. Why shouldn't someone be allowed to use it in a brief? It gets the job done.</p> <p>* * *</p> <p>[The commenter provided extensive comments, not all of which addressed specific provisions of the proposal. Certain portions of the comment therefore are not included in this chart.]</p>	<p>The committees appreciate the commenter's input. The committees decline to recommend allowing sans-serif fonts in body and footnote text because of its more limited readability. However, the committees have added an allowance for sans-serif fonts in headings, subheadings, and captions.</p>
13.	Appellate Practice Section of the San Diego County Bar Association by Heather Guerena, Chair	NI	The Appellate Practice Section of the San Diego County Bar Association shared with its membership the proposed changes to the California Rules of Court contained in Invitation to Comment SPR19-07. After canvassing its membership and discussing the proposed changes among its board and other interested members, the Appellate Practice Section	The committees thank the commentator for this input.

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			<p>has the following comments about those proposed changes:</p> <p>General Comments: The Invitation to Comment requested comments on these two general topics.</p> <p>1. Does the proposal appropriately address the stated purposes?</p> <p>The Executive Summary of the Invitation to Comment states that the purposes of the proposed changes include creating uniform formatting rules to provide consistency and clarity across all the appellate courts in California. The Appellate Practice Section believes that practitioners benefit from having, to the extent possible, one set of rules for all California appellate courts and that the proposed rules generally seem to promote the stated purposes. The Appellate Practice Committee further believes that acceptance of the proposed changes would be enhanced if the Judicial Council also expressed that the proposed rule changes are intended to improve the readability of electronic filings on electronic readers used by judicial officers and staff and that the proposed changes are based upon the courts' experiences with electronic filings and electronic readers to date. Users should want their filings to be readable without difficulty and are more likely to embrace the proposed changes if they</p>	<p>The committees appreciate this feedback.</p>

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			<p>understand that these changes are designed to ease reading on electronic reading devices.</p> <p>Because the proposed rules would bring about a major change from the days of paper filing documents, the Appellate Practice Committee suggests that the Judicial Council organize a webinar with speakers drawn from court staff, practitioners, and perhaps software vendors to explain the rules and address issues practitioners may encounter in implementing them. Such a webinar should be broadcast statewide by video and audio over the internet, and it should be recorded for playback by anyone not able to attend the live session. Questions about the changes also should be solicited in advance of the webinar and during the webinar itself.</p> <p>2. Are there terms that need further reference or definition, such as the words “omission page” or file-type references like “.mp3” or “hyperlink”? The terms “omission page” and “hyperlink” in particular may not be well-known to all electronic filers, especially those who have limited experience to date with electronic filing. Users of the rules would benefit from providing some definition or description of these terms, as is discussed further below in the Appellate Practice Section’s comments to specific proposed rule changes.</p> <p>Specific Comments:</p>	<p>The committees support the suggestion for a webinar, which could be offered by a bar group or continuing education provider. The Judicial Council’s Center for Judicial Education and Research (CJER) provides educational services that support continuing professional development for justices, judges, subordinate judicial officers, and court personnel. CJER does not organize or provide education for practitioners.</p> <p>The committees thank the commenter for this input. The committees note that an advisory committee comment gives two examples of the type of information to include in identifying pages omitted. Because hyperlinks are encouraged but not required, the committees decided not to define this reasonably well-known term.</p> <p>No response required.</p>

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			<p>The Appellate Practice Section’s specific comments to the proposed rule changes are as follows:                      Rule 8.40 No comments.                      Rule 8.44 No comments.                      Rule 8.71(a) No comments.</p> <p>Rule 8.72                      Rule 8.72(a)(1): Electronic filers should benefit from having courts publish, in both electronic and print formats, their electronic filing requirements. Such publications would be a logical place to include a statement that the requirements are intended to improve the readability of such filings on electronic readers.</p> <p>Rule 8.72(a)(2): As is proposed, the rules should retain the requirement that the courts take reasonable steps to provide notice of a problem that impedes or precludes electronic filing. Any such notice likely would raise the question whether, and to what extent, the stated problem requires or supports a postponement of filing deadlines. To minimize uncertainty among filers and unnecessary phone calls or other communications to court staff after each notice is given, the proposed rule should also state something like: “Any such notice should state whether, and to what extent, any filing deadlines affected by the problem are extended.”</p> <p>Rule 8.72(b): Paragraph (1) of this proposed rule incorporates current Rule 8.74(a)(3), which requires</p>	<p>The committees thank the commenter for this input.</p> <p>The committees thank the commenter for this input. The proposal does not require courts to provide anything more than notice to the parties because under rule 8.71 filing a document electronically does not alter any filing deadline. Unless a notice from a court provides otherwise, it would be incumbent on a party or attorney adversely affected by a problem that impedes or precludes electronic filing, upon receipt of notice of the problem, to seek appropriate relief from the court.</p> <p>The committees thank the commenter for this input. The committees decline to add a mental-</p>

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			<p>each filer to “take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to the court’s electronic filing system and to other users of that system.” This rule seems likely to cause confusion as to what is required. The Appellate Practice Section understands that if a filer otherwise complies with the formatting rules for electronic documents, particularly those requiring filings to be in portable document format (PDF), the filing should be free of viruses given current technology. The rule as written leaves it unclear whether filing in this format is a sufficient reasonable step and, if not, what additional steps a filer must take. The Appellate Practice Section suggests that proposed Rule 8.72(b)(1) be rewritten to state that “Each electronic filer must: (1) Comply with all electronic filing requirements in these rules and not intentionally file any document containing computer code, including viruses, that might be harmful to the court’s electronic filing system and to other users of that system.”</p> <p>Rule 8.74            Rule 8.74(a): The title to proposed Rule 8.74(a) is “Format requirements applicable to all electronic documents.” Consequently, this rule would apply not only to the briefs, applications, motions, etc. that have been prepared for original filing in the appellate court but also to all documents in an appendix, attachment, or exhibit that were first filed</p>	<p>state requirement to this provision. Based on this comment, however, the committees have recommended adding an advisory committee comment to clarify that more is required than not intentionally harming the court or other users, and that one reasonable step would be to use a commercial virus scanning program.</p> <p>The committees agree with the commenter that, as drafted and circulated for comment, the proposed amendments to rule 8.74 unintentionally encompassed documents that are not prepared for electronic filing in the first instance in the reviewing court. Based on this and other comments, the committees have made changes to the proposal, and have included an advisory</p>

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			<p>in some other forum. Proposed Rule 8.74(a) includes font, spacing, margin, and alignment requirements. Thus, as written, all documents filed in another forum from which an appeal might be taken would have to be in the format set by Rule 8.74(a) when originally filed or would be precluded from the record on appeal. The problem could be resolved by changing the title of Rule 8.74(a) to “Format requirements for all briefs, applications, motions, or other documents prepared for original filing in appellate court.”</p> <p>Rule 8.74(a)(3): The last sentence of proposed Rule 8.74(a)(3) states, “All bookmarks must be set to retain the reader’s selected zoom setting.” This requirement is not likely to be understood by all users, especially those without experience with electronic filing. Also, at least for filers using current Adobe Acrobat to generate pdf documents, this requirement imposes a significant burden on the filer. Current Adobe Acrobat by default sets zoom as “custom” and does not seem to allow this setting to be changed other than by manually changing the zoom setting for each bookmark to “inherit zoom.” Because this setting is buried several layers down in Adobe Acrobat, not only must the user change the setting for each bookmark, each such change requires a number of “clicks” to accomplish the change.</p>	<p>committee comment to make this requirement clearer.</p> <p>The committees appreciate the commenter’s input on this proposal. The committees support the courts’ publishing instructions on how to comply with the bookmarking requirement.</p>

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			<p>The Judicial Council, which it is believed has more sway than individual attorneys with pdf software vendors, should on its own or in conjunction with local and statewide bar associations approach pdf software vendors, explain the issue, and request that the vendors change their software to allow the equivalent of “inherit zoom” either to be the default setting or to be easily changed to this setting at one time for all bookmarks rather than having to be changed bookmark-by-bookmark. Second, at least until such change has been made by the applicable software vendors, the rule should be written as permissive rather than as mandatory, such as “To maximize the readability of filings on electronic readers, bookmarks in the pdf software used by the filer should be set so that the screen retrieved by use of the bookmark maintains the zoom setting being used by the reader of the document.”</p> <p>Rule 8.74(a)(4): See comment to proposed Rule 8.74(b)(7) below.</p> <p>Rule 8.74(a)(6): Consistent with the comments below to proposed Rule 8.74(a)(13), and given the 25mb size limitation in proposed rule 8.74(a)(5), this rule should be rewritten to delete the reference to Power Point and to photographs and color components as follows: “Audio or video files must be manually filed. Audio files must be filed in .wav or mp3 format. Video files must be filed in .avi or .mp4 format.”</p>	<p>The committees appreciate the commenter’s input on this proposal. The committees acknowledge the suggestion concerning software vendors and will forward it to appropriate Judicial Council staff for consideration. The committees have decided that the benefits of the bookmarking requirement outweigh the burden on electronic filers, and decline to make the proposal’s bookmarking view voluntary.</p> <p>See response below.</p> <p>Based on this and other comments, the committees have modified this provision and the color component provision.</p>

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			<p>Rule 8.74(a)(7): The proposed rule would require all electronically filed documents to use a “proportionally spaced serif face” font. The only example given of an acceptable font is “Century Schoolbook,” and the only example given of a prohibited font is “Times New Roman.” The purpose of this rule seems to be to require a font most easily readable on electronic readers. A problem with mandating any particular font or fonts is that the names of fonts may differ among word processing programs. It also may be difficult for filers to determine whether any particular font is a proportionally spaced serif face font. The proposed rule as drafted might create further confusion because Times New Roman, the font the rule specifically disallows, is itself a proportionally spaced serif face font. The most-preferred font or fonts also may differ from court to court. This rule could be improved by permitting a court to provide by local rule a list of fonts acceptable to that court but not required by that court. With this change, any filer could file using Century Schoolbook in any court, but a filer also could file using other acceptable fonts that may be preferred by a particular court. Because the other fonts would be permitted but not required, allowing courts to provide a list of preferred fonts by local rule would not undermine the purpose of the proposed changes to provide statewide uniform rules.</p>	<p>Based on this and other comments, the committees have deleted the proposal’s prohibition on the use of Times New Roman, but the committees have preserved the rule’s preference for Century Schoolbook, which is considered to be one of the most readable fonts. The committees have chosen to favor uniformity over the existing patchwork of local rules, which make practice in the appellate courts more complicated than is necessary.</p>

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			<p>Rule 8.74(a)(12): This rule may cause some confusion as written. Because “hyperlink” is not defined, some users may not know what it means. Additionally, a filing could contain hyperlinks not only to legal citations but also to an appendix/record. The rule seems to be directed only at hyperlinks to legal citations, however, leaving it unclear whether the courts encourage hyperlinks to the appendix/record, as well. This should be clarified.</p> <p>Also, it has been the experience of some members of the Appellate Practice Section that commercially available software, such as that provided by Lexis or West, can be problematic, which may discourage users from providing hyperlinks if not required by the courts. If done correctly, hyperlinks would be to the benefit of the court and the parties. The Appellate Practice Section suggests that, apart from the proposed rules revisions, the Judicial Council approach vendors of hyperlink software to determine whether such software could be written and purchased by the courts to be applied by to electronic filings after they are filed in pdf rather than before they are filed by parties. If this is possible, then the courts could ensure that all documents to be read by the courts are hyperlinked. Whether such software could be incorporated into current court budgets, or whether there would need to be a per document fee imposed on filers, could be</p>	<p>Based on this and other comments, the committees have clarified the provision relating to hyperlinks. Because hyperlinks are encouraged but not required, the committees chose not to draft a definition for a reasonably well-known term. The committees support the courts’ publishing instructions on how to create hyperlinks.</p> <p>The committees acknowledge the suggestion concerning vendors of hyperlink software and will forward it to appropriate Judicial Council staff for consideration.</p>

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			<p>determined once the cost of any such software is known.</p> <p>Rule 8.74(a)(13): The Appellate Section of the San Diego County Bar Association supports the goal of establishing consistency with respect to electronic filing in all Appellate Districts. However, we have a concern with the prohibition against the electronic filing of any documents containing color expressed in the proposed Rule 8.74, subd. (a)(6) and (a)(13). The Executive Summary for SPR19-07 expresses that the purpose of these rules is to ease the burden on filers. We believe that requiring manual filing of any color documents in fact increases the burden on any filing party and increases the burden on the Courts in organizing their case files. In contrast, the ability to electronically file color documents, exhibits, etc., benefits all parties, including the Courts, by providing clarity and emphasis where it is necessary.</p> <p>This prohibition is especially problematic in the context of proposed Rule 8.74, subd. (b), which requires exhibits not to be filed as individual documents but rather as “volumes no larger than 25 megabytes.” The segregation and manual submission of color exhibits impacts the organization and order of any appendix or exhibit list. The same concern applies to the extent the filer is required to submit its brief manually. Moreover, if the purpose of this rule is to limit the size of files by</p>	<p>Based on this and other comments, the committees have confirmed that ACCMS allows for the filing of color components, and have removed the special filing requirements for documents with color components. Under the modified provisions, manual filing would be required when a filing with a color component exceeds the file-size requirements or in other limited circumstances under the rule.</p>

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			<p>limiting the color content, that concern is already addressed by the size limit articulated in proposed Rule 8.74, subd. (a)(5).</p> <p>At present, it appears that only the Third Appellate District restricts filers’ ability to electronically file color documents. (Local Rule 5, subd. (e)(7).) The Appellate Practice Section respectfully requests that the Judicial Council consider that the remainder of Appellate Districts have no such restriction and that imposing such a restriction on filers in all Districts creates an undue burden on the filers, as well as the Courts, as it negatively impacts the efficiency and economy associated with organizing and maintaining the manual and electronic portions of appellate case files. The proposed rules thus should not bar electronic filing of color documents within the 25 mb restriction but should allow the Third Appellate District to have a local rule barring color filing until such time as that District is able to accept color in electronically filed documents.</p> <p>Rule 8.74(b): As written, proposed Rule 8.74(b) seems to impose on all documents within its scope (including appendices under Rule 8.74(b)(3), trial transcripts under 8.74(b)(5), and trial exhibits under Rule 8.74(b)(6)) all the requirements of proposed Rule 8.74(a). Although some subparts of Rule 8.74(a) (such as (1)-(7)) could be applied to documents such as appendices, transcripts, and exhibits, other subparts (such as (8)-(11)) would not</p>	<p>No response required.</p> <p>The committees thank the commenter for this input. Based on this comment and others, the committees have modified the proposal to clarify the requirements of rule 8.74, and to eliminate the cross-references between rule 8.74 and rules 8.40 and 8.204(b). The proposal now would amend subdivision (b) of rule 8.204 to apply only to documents filed in paper form, and to add the</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committees Responses</b>
			<p>seem to apply to these documents other than the extent to which cover pages and tables or indices are prepared for them for use in the appellate courts. See comment above to the proposed title of Rule 8.74(a). The following language should be added at the beginning of the text of each of proposed Rule 8.74(b)(3) and (5): “Except for cover pages, tables, or indices prepared for an appellate court, . . .” In addition, for each of 8.74(b)(3) and (5), the phrase “must comply with this rule” should be changed to “must comply with parts (a)(1) through (a)(7) of this rule . . .” If the title to proposed Rule 8.74(a) is changed as suggested above, there may not need to be any changes to proposed Rule 8.74(b)(6).</p> <p>Rule 8.74(b)(7): The proposed rules and California Rules of Court, rules 8.45, 8.46 and 8.47, do not provide clear instructions regarding the method for separate electronic submittal of confidential or sealed records. In order to provide clarity and uniformity, and to lessen the burden on Court Staff in answering inquiries pertaining to confidential and sealed filings, the method of electronic submittal should be specified, or if such method is set forth on the Truefiling webpage a reference to where that information can be found should be included. In addition, the rules should provide filers with a more concrete description of what language/references should be included on an omission page.</p>	<p>relevant provisions of rules 8.40(c) and 8.204(b) to rule 8.74.</p> <p>The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will retain the suggestion for future consideration. The committees thank the commenter for this input. To the extent the commenter seeks additional guidance, the proposal includes an advisory committee comment that gives examples of descriptions for an omission page.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR19-07**

**Appellate Procedure: Uniform Formatting Rules for Electronic Documents**

**(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committees Responses
			Rule 8.204 No comment. Rule 8.252 No comment.	
14.	Superior Court of Los Angeles County	A	<p>Does the proposal appropriately address the stated purpose? Yes, this is an attempt to provide consistency in the way electronic documents are filed in reviewing courts.</p> <p>Are there terms that need further reference or definition, such as the words “omission page” or file-type references like “.mp3” or “hyperlink”? Yes, it would be beneficial to litigants to have a glossary description of terms available through hyperlink in the rule or as an attachment to assist in clarifying technical terms.</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <p>Would the proposal provide cost savings? If so, please quantify. No, the cost savings for filing electronically have or will be realized through other court initiatives. This proposal addresses consistent formats for filing electronic documents.</p> <ul style="list-style-type: none"> <li>• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</li> </ul> <p>Implementation requirements include training for</p>	<p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question. Because hyperlinks are encouraged but not required, the committees have chosen not to define this reasonably well-known term. The committees support courts’ publishing instructions on how to create hyperlinks.</p> <p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question.</p>

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**SPR19-07**

**Appellate Procedure: Uniform Formatting Rules for Electronic Documents**

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committees Responses</b>
			<p>staff (1-2 hours) and possible modification to the case management system(s) to ensure that the required filing elements of the rule are contained in the documents accepted.</p> <ul style="list-style-type: none"> <li>• Would 3 months from Judicial Council–approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months is sufficient contingent upon the programming updates to the Case Management Systems being completed.</li> </ul>	<p>The committees appreciate the commenter’s input on this question.</p>
15.	Superior Court of San Diego County by Mike Roddy, Executive Officer	NI	<ul style="list-style-type: none"> <li>• Does the proposal appropriately address the stated purpose? Yes.</li> <li>• Are there terms that need further reference or definition, such as the words “omission page” or file-type references like “.mp3” or “hyperlink”? No.</li> <li>• Would the proposal provide cost savings? If so, please quantify. Yes. It would save the costs of printing copies for the parties. The exact costs are unknown.</li> <li>• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Implementation requirements for court would be: Training for staff at the COC I, II, III &amp; Lead positions. The expected number of hours are unknown; however, it should be very minimal</li> </ul>	<p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question.</p> <p>The committees appreciate the commenter’s input on this question.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



**SPR19-07**

**Appellate Procedure: Uniform Formatting Rules for Electronic Documents**

**(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committees Responses
			<p>training for staff. Possible need to adopt procedures for non-compliance.</p> <ul style="list-style-type: none"> <li>• Would 3 months from Judicial Council–approval of this proposal until its effective date provide sufficient time for implementation? Yes.</li> </ul> <p>No additional comments.</p>	<p>The committees appreciate the commenter’s input on this question.</p>
16.	E-filing working group staff of the Supreme Court	NI	<p>Comments regarding Proposed Appellate Court E-Filing Rules, SPR19-07</p> <p><b>1) Rule 8.74(a)(1), requirement to “convert” paper documents:</b> The description of the proposed rule states, “To ensure text searchability, the proposal requires a filer to ‘convert’ a paper document to electronic form, <i>rather than scanning a printed document.</i>” (Italics added) Although the proposed rule itself does not explicitly exclude scanning the document, assuming that is the intent, there are documents, e.g., some exhibits submitted in support of a habeas corpus petition, that are not amenable to being “converted” by a means other than scanning the document. These exhibits often include handwritten documents such as letters, forms with extensive handwriting, photographs, charts, diagrams, etc. It is unclear how such documents could be practicably converted by a means other than scanning, a scanned image of the document typically is sufficient for the purposes for which the document has been filed, and it is more efficient to have these documents part of the electronic volume of exhibits rather than, e.g.,</p>	<p>The committees thank the commenter for this input. Based on this comment and others, the committees have modified the proposed amendments to rule 8.74 to address PDF conversion and scanning of paper-only documents. The committees also have proposed adding an advisory committee comment on this provision addressing the types of documents mentioned by the commenter.</p>

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**SPR19-07**

**Appellate Procedure: Uniform Formatting Rules for Electronic Documents**

**(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committees Responses
			<p>having them separately filed as a paper document. It may, therefore, be beneficial to have an exception in the rule for such documents. Possible language could be as follows:</p> <p>If an electronic filer must file a document that the electronic filer possesses only in paper format, the electronic filer must convert the document to an electronic document by a means that complies with this rule. <u>Use of a scanned image of a paper document is not a permitted means of conversion unless the document cannot practicably be converted into a text-searchable file, for example, if the document is entirely or substantially handwritten, a photograph, or a graphic such as a chart or diagram that is not primarily text-based.</u> The printing of an electronic document must not. . . .</p> <p><b>2) Rule 8.74(b)(7), additional requirements for sealed and confidential records:</b> The language of the proposed rule could be revised to be more consistent with the terminology in the rules addressing sealed and confidential records. In addition, the proposed rule appears focused on the procedure for full-page redactions of documents. Typically, parties must submit and, upon ruling by the court, are permitted to file redacted and unredacted versions of the document at issue. In order to maintain the same page numbering in the two versions of the document, there should be an</p>	<p>Based on this comment and others, the committees have modified the provision concerning sealed and confidential documents.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR19-07**

**Appellate Procedure: Uniform Formatting Rules for Electronic Documents**

**(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committees Responses
			<p>“omission page” for each page that has been redacted, not merely a single page representing a range of pages. A suggested revision in clean and redline versions follows.</p> <p>Proposed Rule 8.74(b)(7) as revised:  <i>Sealed and confidential records:</i> Under rule 8.45(c)(1), electronic records that are sealed or confidential must be filed separately from publicly filed records. If one or more pages are omitted from a publicly filed record and filed separately as a sealed or confidential record, an omission page or pages must be inserted in the publicly filed record at the location of the omitted page or pages. The omission page(s) must provide a title for the page(s) omitted that does not disclose the substance of the page(s). The omission page(s) must be paginated consecutively with the rest of the publicly filed record, must be bookmarked, and must be listed in any indexes included in the publicly filed record. The PDF counter for the omission page(s) must match the page number(s) of the omission page(s). Separately filed sealed or confidential records must comply with this rule and rules 8.45, 8.46, and 8.47.</p> <p><i>Sealed and confidential records:</i> Under rule 8.45(c)(1), electronic records that are <u>sealed or confidential</u> <del>or under seal</del> must be filed separately from publicly filed records. If one or more pages are omitted from a <del>source document</del> <u>publicly filed record</u> and filed separately as a sealed or confidential</p>	<p>The committees appreciate the suggested changes submitted by the e-filing working group staff, and have recommended adopting most of them.</p>

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**SPR19-07**

**Appellate Procedure: Uniform Formatting Rules for Electronic Documents**

**(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committees Responses
			<p>record, an omission page or pages must be inserted in the <del>source document</del> publicly filed record at the location of the omitted page or pages. The omission page(s) must <del>identify</del> provide a title for the type of page(s) omitted; that does not disclose the substance of the page(s). The omission page(s) must be paginated consecutively with the rest of the <del>source document, it</del> publicly filed record, must be bookmarked, and it must be listed in any indexes included in the <del>source document</del> publicly filed record. The PDF counter for the omission page(s) must match the page number(s) of the omission page(s). Separately filed sealed or confidential or sealed records must comply with this rule and rules 8.45, 8.46, and 8.47.</p> <p><b>3) Rule 8.78(a)(2)(B), consent to electronic service:</b> The proposed rules do not revise this rule. However, the equivalent rule in the trial court rules, Rule 2.251(b)(1)(B), was recently revised to be in compliance with newly enacted section 1010.6 of the Code of Civil Procedure, which, at least in the trial courts, no longer permits use of the act of electronic filing to serve as consent. Rather, affirmative consent is required. (See Report to the Judicial Council for September 21, 2018 Meeting, Item 18-141, pp. 3 &amp; 9, available at <a href="https://jcc.legistar.com/View.ashx?M=F&amp;ID=6612001&amp;GUID=E5CF50DA-2B58-487A-BBC3-A77A1A2ABAE3">https://jcc.legistar.com/View.ashx?M=F&amp;ID=6612001&amp;GUID=E5CF50DA-2B58-487A-BBC3-A77A1A2ABAE3</a>) Must or should rule 8.78(a)(2)(B) be similarly revised?</p>	<p>The suggestion would be a substantive addition to the proposal. Because under California Rules of Court, rule 10.22, substantive changes to a rule need to circulate for public comment before being recommended for adoption by the Judicial Council, the committees will consider this suggestion during the next rules cycle.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR19-07****Appellate Procedure: Uniform Formatting Rules for Electronic Documents****(Amend California Rules of Court, rules 8.40, 8.44, 8.46, 8.71, 8.72, 8.74, 8.77, 8.78, 8.204, and 8.252)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committees Responses</b>
17.	Kristin Traicoff Law Office of Kristin Traicoff Sacramento	NI	As an appellate practitioner, I believe proposed rule 8.74(a)(3) should be amended where it states: "Each electronic document must include..." It should, instead, provide that certain electronic documents are exempted from the bookmarking requirement -- such exemptions might include requests for extensions of time, service copies of supplemental records requests made to the trial court under Rule 8.340(b), and other short motions that do not contain the subsections that this rule appears to contemplate (for instance, a request that the Court of Appeal transmit a sealed record to counsel, a Motion to Augment the Record, etc). Perhaps this could be effectuated by amending the proposed rule text to provide that bookmarking is required for each electronic document that exceeds a certain number of pages. The purpose of my proposal is to save appellate counsel the undue burden of adding bookmarks to documents where, realistically, the court is unlikely to find the bookmarks useful or rely on them in any way.	The committees thank the commenter for providing input on this proposal. The proposal's bookmarking requirements apply to documents with certain components. The bookmarking requirements are intended to aid readers of all electronic documents. The committees appreciate that creating bookmarks will require additional time, but the utility of bookmarks for readers justifies any burden on filers imposed by this requirement.
18.	Norm Vance Berkeley	NI	The ban on Times New Roman in proposed rule 8.74(a)(8) is silly. The rule requires use of a "proportionally spaced serif font." Times New Roman is exactly that. It is perhaps the best known and most widely used example of such a font. I realize that certain courts in the state do not appear to like it. I, for one, do. I find it very readable. Is this really a necessary rule?	The committees thank the commenter for providing input on this proposal. Based on this and other comments, the committees have deleted the proposal's prohibition on Times New Roman.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

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### MEMORANDUM

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**Date**

July 29, 2019

**Action Requested**

Please Review

**To**

Hon. Marsha G. Slough, Chair  
Hon. Gary Nadler, Vice-Chair  
Judicial Council Technology Committee

**Deadline**

N/A

**From**

Kathleen Fink, Manager,  
Judicial Council Information Technology

**Contact**

Kathleen Fink, Manager  
415-865-4094  
kathleen.fink@jud.ca.gov

**Subject**

Civil Case Management System (V3)  
Replacement Projects: Status May 21 – July  
22, 2019

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**Project:** Civil Case Management System (CMS) (V3) Replacement projects for the Superior Courts of Orange, Sacramento, San Diego, and Ventura Counties

**Status:** Monthly Project Status meetings were held on June 24 and July 22, 2019. The next meeting is scheduled for August 26, 2019.

**Intra Branch Agreements (IBAs):**

Sacramento Superior Court met the final deliverable for the FY 2016-17 IBA and the allocation and distribution are in process.

**Ventura Superior Court (Journal Technologies - eCourt):**

Working sessions with JTI for requirements gathering and documentation for Civil are making good progress. Judicial Officers visited Los Angeles Superior Court for eCourt Civil briefings.

July 29, 2019

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JTI replaced one of the two developers on the Ventura project. The impact is minimal as most of the work now in progress depends heavily on court staff.

Ventura exploring hiring a project management consultant to provide undivided focus on driving the project.

**San Diego Superior Court** (Tyler Odyssey):

Data conversion testing continues for all case types.

For the Odyssey changes needed for San Diego, Tyler has divided the work into 53 projects of related requirements, with 4 concurrent development teams working on the projects.

Tip sheets are being drafted for areas of Odyssey that are not changing.

**Sacramento Superior Court** (Thomson Reuters C-Track):

Sacramento and TR executed the Statement of Work at the end of June. Detailed planning is starting for all tracks (Civil, Probate, Mental Health).

A new PM is taking on the V3 conversion to C-Track, Astinder Sidhu. Gary Nishi will focus on Criminal and Traffic.

TR has developed a new GUI based data mapping tool that will improve this critical process.

**Orange Superior Court** (Update CMS V3 for supportability and reliability):

V3 Release 15.01 has been deployed into production, and includes some changes developed and integrated by Orange.

Modernization efforts are progressing, with Operations staff testing in a development environment. The selected modernization vendor, Slalom Consulting, is in discovery now and is also investigating moving V3 into the Azure environment.



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### MEMORANDUM

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**Date**

July 29, 2019

**Action Requested**

Please Review

**To**

Hon. Marsha G. Slough, Chair  
Hon. Gary Nadler, Vice-Chair  
Judicial Council Technology Committee

**Deadline**

N/A

**From**

David Koon, Manager,  
Judicial Council Information Technology

**Contact**

David Koon, Manager  
415-865-4618  
david.koon@jud.ca.gov

**Subject**

Sustain Justice Edition (SJE) Replacement  
Projects: Status May 1 – July 31, 2019

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As requested, this communication provides a written update regarding the progress of the nine courts using the Sustain Justice Edition (SJE) case management system which collectively received \$4.1 million in funding for FY 17/18 and \$896,000 in FY 18/19 as a result of submitting a BCP to replace the SJE case management system with a modern CMS platform.

**Project:** Sustain Justice Edition (SJE) Replacement project for the Superior Courts of Humboldt, Lake, Madera, Modoc, Plumas, San Benito, Sierra, Trinity, and Tuolumne counties.

**Status:** Judicial Council staff and the SJE courts met on July 17, 2019 for their monthly status meeting. At these meetings, the SJE courts review the status of the deployments of the new case management system. The Madera Court went live on a cloud hosted version of eCourt the weekend of June 17, 2019. The focus of project activity is on the Plumas, Sierra and Humboldt courts who are the next courts scheduled to go-live in the fall of 2019. Additionally, amendments to each of the nine court's intra-branch agreements (IBA's) that incorporates FY 18/19 BCP funding into their existing IBA have all been executed. These IBA's provide the



May 2, 2019

Page 2

mechanism for the Judicial Council to distribute the BCP funding to each court to fund the replacement of the court's legacy case management system.

**Next Steps:** Judicial Council staff and the SJE courts will continue to meet monthly to review progress and upcoming milestones.